WELCOME TO HOBBY LOBBY

On August 3, 1972, Hobby Lobby began its operation with 300 square feet of retail space located in Oklahoma City as a result of the retail outgrowth of Greco Products, a miniature picture frame company co-founded by David Green in 1970. In January of 1973, the original operation was moved to a house near Northwest 23rd Street and Western Avenue in Oklahoma City, and the amount of retail space was increased to approximately 1,000 square feet. Since its modest beginning, Hobby Lobby has become one of the largest arts, crafts, hobby, and home accent retailers in the country, operating several hundred retail stores throughout the United States. In addition to Hobby Lobby, the Company's affiliates operate manufacturing, distribution, and other retail and service companies.

STATEMENT OF PURPOSE FOR HOBBY LOBBY

In order to effectively serve our owners, employees and customers, the Company is committed to:

- Honoring the Lord in all we do by operating the Company in a manner consistent with Biblical principals;
- Serving our employees and their families by establishing a work environment and Company policies which build character, strengthen individuals, and nurture families; and
- Providing a return on the owners' investment, sharing the Lord's blessings with our employees, and investing in our community.

We believe that it is by God's grace and provision that the Company has endured. He has been faithful in the past, and we trust Him for our future.

While our Statement of Purpose reflects the beliefs of the ownership of the Company, Hobby Lobby has a strict policy against discrimination on the basis of any person's religious affiliation or beliefs or lack thereof.

MARDEL, INC.

Mardel, Inc. began operations in Oklahoma City with a single 7,200 square foot store in 1981. Since that time, Mardel has grown to more than 30 Christian and educational supply stores in numerous states.

MARDEL'S VISION

Our vision is to see the products that we sell and donate provide people with the hope of eternal life through Jesus Christ our Savior and Lord.

Titus 3:7 NAS
that being justified by His grace we might be made heirs according to the hope of eternal life.

MARDEL'S MISSION

Our mission is to equip the whole person by being a resource center that provides for spiritual, intellectual, and practical needs.

Ephesians 4:12-13a NAS
For the equipping of the saints for the work of service, to the building up of the body of Christ; until we all attain to the unity of the faith, and of the knowledge of the Son of God.

MARDEL'S OBJECTIVES

- To offer our customers the greatest possible value through an extensive selection of quality products with excellent savings in an atmosphere of exceptional service.
- To be a profitable organization, thus allowing the continuation of the ministry we perform.
- To be a leader in providing Bibles to the world. This will be done through both the selling and donating of God's Word.
- To create an environment that allows employees to feel a part of our mission.

MARDEL'S COMMITMENT

Our commitment is to donate 10% of pre-tax profits to support our objective of providing Bibles to the world. A large portion of our yearly donation is contributed to printing Bibles translated by Wycliffe Bible Translators.

[redacted]

We proudly welcome you to the Hobby Lobby family of companies. We are confident that through your efforts and dedication, we will continue to grow and prosper.

2. EMPLOYMENT POLICIES

AT-WILL EMPLOYMENT RELATIONSHIP

The employment relationship between the Company and each of its employees is at-will. All Company employees are employed on an at-will basis, and nothing to the contrary stated anywhere in this Employee Handbook or by any Company representative changes any employee's at-will status. All employees are free to resign at any time, for any reason, with or without notice. Similarly, the Company is free to terminate the employment relationship at any time, for any reason, or for no reason at all. No supervisor, manager, or representative of the Company, other than a Corporate Officer, has the authority to enter into any agreement, written or otherwise, with you for employment for any specified period or to make any promises or commitments contrary to the foregoing. Further, any employment agreement entered into by a Corporate Officer shall not be enforceable unless it is in writing.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

The Company provides equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, gender, pregnancy, national origin, age, disability, or Veteran's status in accordance with applicable federal laws. In addition, the Company complies with applicable federal, state and municipal laws governing nondiscrimination in employment in every location in which the Company operates. This Policy applies to all terms and conditions of employment, including but not limited to, hiring, placement, promotion, dismissal, layoff, recall, transfer, leaves of absence, compensation, and training.

INDIVIDUALS WITH DISABILITIES AND REASONABLE ACCOMMODATIONS POLICY

The Company complies with the Americans With Disabilities Act ("ADA"), as amended, and applicable state and municipal laws providing for nondiscrimination in employment against qualified individuals with Disabilities (as defined below). The Company provides reasonable accommodations for otherwise qualified individuals with Disabilities in accordance with these laws. "**Disability**" means a physical or mental impairment that substantially limits one or more major life activities. It is the Company's Policy to:

1. Ensure that qualified individuals with Disabilities are treated in a nondiscriminatory manner in the pre-employment process and that employees with Disabilities are treated in a nondiscriminatory manner in all terms and conditions of employment.

2. Administer medical examinations to: (a) applicants only after conditional offers of employment have been extended, and (b) employees only when justified by business or regulatory necessity.

3. Keep all medical information confidential in accordance with the requirements of the ADA and retain such information in separate confidential medical files.

4. Provide reasonable accommodations to applicants and employees with Disabilities, except where: (a) an applicant or employee with a Disability is not otherwise qualified to perform a particular job, (b) a reasonable accommodation would not enable the individual to perform the essential functions of the job, or no reasonable accommodation exists, (c) an accommodation would cause undue hardship to

the Company, or (d) an applicant or employee would pose a direct threat of substantial harm to the health or safety of himself/herself or others.

5. Notify individuals with Disabilities that the Company provides reasonable accommodations to qualified individuals with Disabilities by including this Policy in the Company's Employee Handbook and by posting Equal Employment Opportunity information conspicuously on the Company's Employee Information Boards.

Requesting a Reasonable Accommodation

It is the employee's responsibility to inform the Company's Human Resources Department of the necessity for a reasonable accommodation for any Disability. Effective communication between employees and the Company is key; therefore, all requests for reasonable accommodations should be submitted in writing to the Company's Human Resources Department. If an employee has questions about this policy or his/her need for a reasonable accommodation, the employee should contact the Human Resources Department at (877) 303-4547.

The Company will engage the employee in an "**Interactive Process**"[1] requiring current medical documentation from a healthcare provider verifying the employee's Disability and need for the requested reasonable accommodation. The Interactive Process entails communication between the employee's direct supervisor, the Human Resources Department, the employee, and the healthcare provider to gather and evaluate all of the relevant information regarding the impairment and determine what, if any, reasonable accommodation may be made for the employee in order to assist him/her in performing the essential functions of his/her job.

If an employee is unable to perform all of the essential functions of his/her job, the employee will be placed on an unpaid leave of absence (Family Medical/Military Leave, if eligible) during the Interactive Process.

If an employee fails to cooperate with or participate in the Company's Interactive Process in a timely manner, the employee's supervisor will make any future employment decisions without regard to the employee's request for reasonable accommodation or reported impairment.

After engaging in the Interactive Process, the Company will inform the employee whether a reasonable accommodation exists. If there is no reasonable accommodation available that enables the employee to perform the essential functions of his/her job, the Company may terminate the employee.

Employees who are granted reasonable accommodations must understand that the business needs of the Company may change at any time. Therefore, the Company reserves the right to reevaluate or modify a reasonable accommodation granted to an employee to accord with changing business needs and this Policy. Further, employees who are granted reasonable accommodations must continue to comply with all applicable Company policies, procedures, practices and rules. An employee who has been granted a reasonable accommodation remains an at-will employee.

NON-UNION STATEMENT

The Company strives to provide all employees with the best working conditions, wages, and benefits possible in the retail industry. The Company is a non-union company and desires to remain so. The Company contends that the business upon which everyone depends for a livelihood can best continue its successful growth in a flexible, non-restrictive environment. Further, the Company wants its employees to remain free of the burden of unnecessary dues and assessments for union membership. Additionally, the Company believes it is important

[1] This process is also referred to as a "Restriction Review"

to maintain direct, effective communication. As employees of a non-union company, employees can communicate with supervisors and other members of management directly, on a one-to-one basis. The Company desires and makes it possible to discuss and resolve any problems on an individual basis without outside interference. Employees are encouraged to discuss any concerns with their immediate supervisor, other members of management, or the Company's Human Resources Department. All problems are heard, considered and resolved in the fairest way possible. As individuals, employees have the right to think, act, and speak for themselves. The Company respects this right and encourages the exercise of this privilege throughout each employee's career with the Company.

MOONLIGHTING POLICY

When an employee accepts full-time employment with the Company, the employee agrees to devote his/her best efforts, energies, and skills to performing his/her assigned duties. Consequently, the Company allows its employees to accept outside work only when such work:

1. does not interfere with Company work hours (regular or overtime);

2. does not affect the efficient performance of job duties with the Company; and

3. does not cause the employee to be an accident hazard through fatigue, worry or other conditions.

Note: permission to hold any outside employment or business interests with anyone doing business with the Company, its vendors, or suppliers, must be secured from a Corporate Officer in writing. Failure to secure advance permission may result in immediate disciplinary action, up to and including termination of employment.

EMPLOYMENT OF RELATIVES POLICY

The Company permits the employment of qualified Relatives of employees as long as such employment does not, in the opinion of the Company, create actual or perceived conflicts of interest. For purposes of this Policy, **"Relative"** is a Spouse, child, parent, sibling, grandparent, grandchild, aunt, uncle, first cousin, or corresponding in-law or step relation. **"Spouse"** means an employee having a legal marital relationship, as well as an employee involved in a relationship which in the Company's judgment is characterized by the permanence, duration, and stability normally associated with marriage. The Company will exercise sound business judgment in the placement of related employees in accordance with the following guidelines:

1. Relatives are permitted to work in the same Company facility, provided that no employee may hire, promote, or give any pay raise to any Relative without prior written approval by the employee's direct supervisor.

2. No Relatives are permitted to work in the same department or in any other positions in which the Company believes an inherent conflict of interest may exist.

3. Employees who marry while employed are treated in accordance with these guidelines.

4. If, in the opinion of the Company, a conflict or apparent conflict arises as a result of the employment of Relatives, one of the employees will be transferred at the earliest practicable time. If, after exhaustion of all reasonable efforts, transferring one of the employees is not practicable, the Company may require the resignation of one of the employees.

EMPLOYMENT OF MINORS POLICY

The Company will not employ persons under the age of 16 years. Employees under the age of 18 are considered **"Minors"**, and are subject to the restrictions and requirements of the various federal, state, and municipal laws. Most states require Minors to submit proof of age, work permits, or employment certificates as a condition to employment. Employees should consult their supervisors if they have questions regarding the laws affecting Minors.

No Minor may operate any heavy equipment, including floor jacks, forklifts, or any other machinery that may be dangerous. Minors are strictly prohibited from operating and unloading the trash compactors and cardboard balers, however, Minors are entitled to load such equipment. No Minor may operate, set up, adjust, repair, oil, clean, or otherwise use power-driven staple guns.

PHOTO IDENTIFICATION BADGES POLICY

Each employee issued a photo identification ("I.D.") badge by the Company must wear the I.D. badge bearing his/her own photo when reporting to work and at all times while on the premises. The Company may use I.D. badges to record employee time and attendance and also for visual identification. It is the employee's responsibility to keep possession of his/her I.D. badge. The I.D. badge must be worn on the top half of the employee's person with the picture plainly visible at all times. I.D. badges are for the exclusive use of the employee pictured. Misuse of the I.D. badge is a violation of this Policy and will result in disciplinary action, up to and including termination of employment. Also, I.D. badges are the property of the Company and must be returned when employment ends. A fee will be charged for all lost, stolen or unreturned I.D. badges.

REQUIRED TOOLS AND EQUIPMENT

The Company may require some employees to provide their own equipment. The employee's supervisor will inform the employee of any required tools or equipment.

RETURN OF COMPANY PROPERTY POLICY

At the time an employee separates from the Company, the employee will be required to turn in his/her I.D. badge, backbelt, any supplies the Company provided to the employee, the employee's locker combination lock, and any other Company property in the employee's possession before receiving his/her final paycheck. **The value of any Company property issued and not returned may be deducted from the employee's paycheck.**

PERSONNEL FILES POLICY

The Company owns and maintains personnel files on each employee. These files are the property of the Company. At the store level, **ONLY** the store manager and co-manager shall have access to personnel files. Review of personnel files without management approval as outlined below is strictly prohibited. Personnel files may contain documentation regarding all aspects of the employee's history with the Company such as employment applications, personnel changes, and disciplinary documents. With respect to any medical information collected by the Company, such documents will be maintained in a separate file, not in the general personnel file.

Employee Review of Personnel Files

Employees may review the contents of their personnel files, as well as any personal medical records maintained in their separate medical files, and receive copies of any documents contained in such files under the following conditions:

1. Current employees may review and/or request a copy of their personnel and/or medical files once every 6 months by submitting a signed written request to their supervisor.

2. Separated employees may, within 1 year of separation from employment, receive a copy of their personnel and/or medical files by submitting a signed written request to their former supervisor.

3. Review of a current employee's personnel and/or medical files must take place at or reasonably near the employee's place of employment and during normal business hours.

4. The Company shall bear the cost of copying personnel and/or medical files.

5. The Company shall respond to all valid signed written requests within 7 business days after receipt.

CHANGE OF PERSONAL INFORMATION

It is important that all personal information about each employee be up-to-date at all times. Therefore, every employee must immediately notify his/her supervisor in writing any time there is a change in the employee's name, telephone number, home address, marital status, number of dependents, beneficiary designations, emergency contacts, or other personal information. **Note: All information sent to the employee's address as listed in the Company's payroll system shall be deemed received by the employee.**

EMPLOYEE REFERENCE POLICY

In the event the Company receives a request from a third party for a personal or professional reference or employment verification on any current or former employee, the Company may provide **only** the employee's date of hire, date of separation (if applicable), and last position held.

OPEN DOOR POLICY

The Company sincerely wants every employee to succeed in his/her job and desires to resolve any problems promptly and fairly. If an employee has any problem relating to his/her job, the employee should promptly and frankly discuss it with his/her supervisor. If the employee feels that his/her supervisor is the source of the problem, the employee should speak with the next level of management or the Company's Human Resources Department. The Company instructs management to treat every problem with dignity and respect. An employee will find that an honest and sincere talk with his/her supervisor is generally the easiest and most effective way of dealing with any problem.

To ensure that a problem or complaint is clearly understood, management may require that the employee provide a detailed written description of the problem or complaint.

Management will objectively evaluate an employee's problem or complaint, and based on all available information, will make a good faith determination as to what actions, if any, are necessary to reach a fair resolution. Remember, the Company is unable to resolve a problem unless the employee lets the Company know that it exists. Further, while this Open Door Policy provides a means for employees to be heard, it does not promise or guarantee that the employee's opinion will always prevail. However, when an employee brings a problem to management's attention, the employee does so with the full permission and encouragement of the Company.

CONFLICT RESOLUTION POLICY

It is the intent and hope of the Company that disputes and conflicts between employees and/or related to employment be addressed in a manner which is consistent with the values of the Company. Accordingly, an employee who is a party to a conflict or dispute with another employee is encouraged to address the conflict directly with the other person involved in the conflict in an effort to resolve it. In the event that this effort is unsuccessful, the employee should seek the assistance and involvement of his/her immediate supervisor who may be able to facilitate the resolution of the conflict applying principles outlined within this policy.

An attempt to resolve the conflict under the Conflict Resolution Policy does not prevent an employee from utilizing the Open Door Policy.

The Four Principles for Peacemaking

Employees should approach conflict resolution in a manner that does more than simply resolves disputes, but also serves others, helps the involved people grow, provides an example of the Company's values, and leads to a more productive and cooperative working relationship between employees. Employees should consider the following peacemaking principles when attempting to resolve conflict:

1. Go to Higher Ground: Employees should see conflict as the opportunity to clarify and live out their highest values and beliefs. Employees should evaluate conflicts to see whether there is an opportunity for forgiveness.

2. Get Real About Yourself: Employees should take responsibility for their contributions to conflicts before criticizing others.

3. Gently Engage Others: An employee in conflict should affirm the relationship with the person with whom he/she is in conflict and confront that person respectfully.

4. Get Together in Lasting Solutions: Employees can preserve relationships through genuine reconciliation and fair solutions.

If an employee is interested in applying the above principles to a conflict, he/she should contact his/her supervisor, the Chaplain's Office, or the Human Resources Department for guidance.

SUBMISSION OF DISPUTES TO BINDING ARBITRATION

All employees and the Company mutually agree to submit all employment-related legal disputes (excluding claims for benefits under workers' compensation, unemployment compensation laws, and ERISA-governed benefit plans) between any employee and the Company to binding arbitration. All Company employees are required to sign and return a Mutual Arbitration Agreement as a condition of their employment and continued employment. The Mutual Arbitration Agreement is included at the end of this Employee Handbook.

Arbitration is mutually beneficial to both the Company and its employees. Arbitration provides:

1. Speed. Court proceedings are cumbersome, complicated, and lengthy. The arbitration process is less complicated and quicker.

2. Reduced cost. Employees and the Company will save money by avoiding the costly expense of court litigation. The arbitrator's fee and administrative costs assessed by the arbitrator and/or arbitration provider will be borne solely by the Company.

3. Experienced decision maker. The arbitration procedures require an arbitrator to be experienced in employment- related disputes. For more than thirty years, the United States Supreme Court has encouraged employees and employers to take advantage of arbitrators' experience and knowledge.

Arbitration under the Mutual Arbitration Agreement between employees and the Company shall be conducted by either the Employment Arbitration Rules and Mediation Procedures or the Institute for Christian Conciliation and pursuant to the American Arbitration Association's National Rules for the Resolution of Employment Disputes or the Institute for Christian Conciliation's Rules of Procedure for Christian Conciliation, respectively, and any other applicable rules then in effect. At the time the employee submits the dispute to arbitration, the employee will be asked to select which arbitration provider organization to arbitrate the matter: either the Employment Arbitration Rules and Mediation Procedures or the Institute for Christian Conciliation.

Every effort has been made to ensure that all employees have access to a copy of the applicable arbitration rules and procedures as adopted by the Employment Arbitration Rules and Mediation Procedures and those adopted by the Institute for Christian Conciliation. Employees may review the arbitration rules and procedures by:

1. Requesting a copy or copies from the employee's supervisor;

2. Requesting a copy or copies from the Company's Human Resources Department at (877) 303-4547; or

3. Reviewing the complete set of up-to-date rules, forms, procedures and guides available from the Employment Arbitration Rules and Mediation Procedures and the Institute for Christian Conciliation by viewing their websites at www.adr.org and www.peacemaker.net, respectively.

Please review these rules and procedures carefully.

3. ORIENTATION, COMPENSATION, AND BENEFITS

ORIENTATION PERIOD

The first 90 days of a new employee's employment with the Company is considered an **"Orientation Period."** The Orientation Period involves frequent informal evaluations of the employee's progress, attitude, behavior, attendance, and overall job performance. If, during the Orientation Period, an employee fails to meet the Company's expectations for acceptable progress, attitude, behavior, attendance, and overall job performance, the Company may terminate the employee's employment. Successful completion of the Orientation Period does not guarantee continued employment nor does it mean that the employee cannot be disciplined, evaluated or terminated from employment. Nothing contained in this Policy changes the at-will employment relationship between the Company and its employees, and all employees remain at-will at the end of the Orientation Period.

CLASSIFICATIONS OF EMPLOYMENT

For purposes of eligibility for employee benefits, the Company classifies its employees as follows:

1. **"Full-Time Employee":** Employees hired to work the Company's normal, full-time workweek of 35 hours or more, on a regular basis. The term Full-Time Employee does not include leased, contract, part-time, temporary, or seasonal employees.

2. **"Part-Time Employee":** Employees hired to work fewer than 35 hours per week on a regular basis.

3. **"Seasonal/Temporary Employee":** Employees engaged to work with the understanding that their employment will be terminated no later than upon completion of a specific assignment or period. Seasonal/Temporary Employees do not change their employment classification regardless of the number of hours worked in a workweek. Seasonal/Temporary Employees are not eligible for Holiday Pay, Personal Paid Time Off, Sick Pay, Vacation Pay, Medical and Dental Benefits, Prescription Drug Benefits, Term Life Insurance, Long Term Disability Insurance, Flexible Benefits Accounts, or the 401(k) Plan. (Note: employees hired from temporary employment agencies are employees of the respective agency and not of the Company).

All employees should be informed of their initial employment classification and whether they are exempt or nonexempt under federal wage and hour regulations. If an employee changes positions during his/her employment, the employee should be informed by his/her supervisor of any change in the employee's exemption status. Employees should direct any questions regarding employment classification or exemption status to their supervisors.

REGULAR PAY PROCEDURES

All Company employees are normally paid by check or direct deposit on a biweekly basis. If a scheduled payday falls on a Company-observed holiday, the employee will usually be paid on the preceding regular business day. All required deductions, such as federal, state, and local taxes, garnishments and wage orders, and all authorized voluntary deductions, such as Medical and Dental Benefit premiums, will be withheld automatically from the employee's paycheck.

Employees should always review their paychecks for errors. If an employee finds a mistake, he/she must immediately report it to his/her supervisor who will assist the employee with correcting the error.

In the event that an employee's paycheck is lost or stolen, the employee must immediately notify his/her supervisor. The supervisor will, in turn, notify the Company's payroll supervisor who will attempt to put a stop-payment notice on the paycheck. If the Company is able to properly stop payment on the lost or stolen paycheck, the Company will issue a new paycheck. However, the Company is not responsible for lost or stolen paychecks, and if the Company is unable to stop payment, the employee alone will be responsible for such loss.

The Company will not release a paycheck to any individual or entity other than the employee to whom it is issued. However, an employee may authorize the Company to release his/her paycheck to a specific individual by providing the employee's supervisor with written directions identifying the individual to whom the paycheck may be released, including such individual's complete street address (no P.O. Box), telephone number (work and home), and a copy of such person's driver's license. Such directive must be signed by the employee in the presence of an authorized individual, such as the employee's supervisor or the payroll supervisor, who will acknowledge receipt by also signing the directive. Such acknowledgement is in no way to be construed that the information contained in the directive is adequate or correct and the Payroll Department reserves the right to reject such directive at any time in its sole discretion. Such directive shall be in force and effect until the authorizing employee terminates the written authorization.

In the event an employee is unable to personally receive his/her paycheck and there is no written directive to give the paycheck to another individual, the paycheck will be mailed to the employee's last known address, without further liability to the Company.

OVERTIME

The business needs of the Company may require employees to work overtime. If an employee is classified as a nonexempt employee, the employee will receive compensation for approved overtime work as follows:

1. Employees will be paid at straight time (*i.e.*, regular hourly rate of pay) for the first 40 hours worked in any given workweek.

2. Employees will be paid one and one-half times the regular hourly rate of pay for all hours worked beyond the 40th hour in any given workweek.

Overtime is only given for the number of hours over 40 **actually worked** in a workweek, and compensatory time will **not** be given in lieu of overtime pay.

Supervisors will attempt to provide employees with reasonable notice when the need for overtime work arises. However, advance notice may not always be possible.

BENEFITS

The Company offers a full range of benefits to its Full-Time Employees, including: Holiday Pay, Personal Paid Time Off (hourly employees only), Sick Pay (salaried employees only), Vacation Pay, Medical and Dental Benefits, Prescription Drug Benefits, Term Life Insurance, Long Term Disability Insurance, or Flexible Benefits Accounts, and the 401(k) Plan. Full-Time Employees will receive a Benefits Summary Guide within approximately 45 days of their full-time date of hire. The Benefits Summary Guide provides current details regarding all of the benefits provided by the Company, including eligibility requirements. Employees with

questions regarding benefits should contact the Benefits Department at (405) 745-1182.

EMPLOYEE DISCOUNTS

Company employees may receive employee discounts at Hobby Lobby, Mardel, Basket Market, and Hemispheres retail store locations. Discounted sales will be granted to the employee and/or the employee's spouse when verification of identity and employment is established at the time of purchase by showing the individual's driver's license and employee's most recent payroll check stub or I.D. Badge.[1] Discounted sales will not be granted to the employee's friends, relatives or anyone that is shopping for the employee. However, when accompanied by the employee or the employee's spouse, members of the employee's household are entitled to discounted sales if employment and identity are verified as described above. Employee discounts between entities will only be honored on a cash, check, credit card, or gift card basis. The discount cannot be used to purchase gift cards. The discount available at **Hobby Lobby**, **Mardel**, and **Basket Market** locations is 15% on all regularly-priced and sale merchandise. The discount available at **Hemispheres** locations is 10% on all regularly-priced and sale merchandise.

CHAPLAIN SERVICES

The Company believes that the overall emotional, physical, and spiritual health of the employee is essential to proper job performance and healthy living. To help its employees maintain sound emotional and spiritual health, the Company offers the services of its Chaplain. The Chaplain can be reached at (405) 745-1287, and is available to any employee of the Company. If, at any time, the Chaplain feels that an employee's problems or needs reach beyond the Chaplain's services, the Chaplain may refer that employee to outside counseling services or to any available employee assistance program. If the concern is work-related, the Chaplain will encourage the employee to present the concerns to a member of management better suited to address the concern, or the Human Resources Department, in accordance with the Open Door Policy. Further, if the Chaplain feels that the employee may pose a threat of danger to his/her own person or others, the Chaplain, in his/her discretion, may contact the employee's supervisor regarding the need to suspend that employee for safety purposes and refer the employee to the appropriate professional help. All contact with the Chaplain shall remain confidential, and only safety concerns will necessitate contact with the employee's supervisor.

EMPLOYEE REHIRE POLICY

Any employee who voluntarily resigns or is terminated from employment, and who is later rehired, will be considered a new employee and the eligibility requirements for benefits provided by the Company must be met again, including Holiday Pay, Personal Paid Time Off (hourly employees only), Sick Pay (salary employees only), Vacation Pay, Medical and Dental Benefits, Prescription Drug Benefits, Term Life Insurance, Long Term Disability Insurance, Flexible Benefits Accounts and 401(k) Plan. Any employee currently paying premiums for Hobby Lobby's COBRA, and rehired within 30 days of separation from the Company, should contact the Benefits Department at (405) 745-1182 to learn whether he/she is eligible to begin participating in some of these plans upon rehire. Any employee enrolled in the Flexible Benefits Account who separates from the Company, and then is rehired within 30 days of separation, will automatically be reinstated to his/her most recent election(s) for the remainder of the Plan Year.

[1] As of March 2010, all employees at the Oklahoma City Campus and the Hemispheres Warehouse in Dallas, Texas have Company-issued I.D. Badges.

4. ATTENDANCE, BREAKS, AND LEAVES OF ABSENCE

TIME CLOCK POLICY

Hourly employees are not permitted to clock in before the start of their shift, unless authorized by their supervisor. Employees are responsible for their own time and are expected to clock in and out at the appropriate times. As set forth in the Company's Loitering Policy, employees are not allowed on Company property either 30 minutes before they clock in or 30 minutes after they clock out. **Working off the clock, failing to properly clock in or out, or clocking in or out for another employee is strictly prohibited and will result in disciplinary action, up to and including termination of employment.**

ATTENDANCE POLICY

Employee work schedules may vary depending on the needs of the Company. Managers have the discretion to design and assign work schedules that meet the needs of the business. For example, full-time employees at retail locations may be required to work two nights per week and Saturday, as needed.

Absences and Tardies

Employees are expected to report to work on time as scheduled. Failure to do so constitutes a tardy which is defined as clocking in, reporting, and/or returning to work past the scheduled time.

If an employee is going to be tardy or absent from any scheduled work, he/she must speak directly with his/her supervisor before or within 30 minutes of the beginning of his/her shift, and explain the reason for the tardy or absence. If an employee fails to speak directly with his/her supervisor as required above, such will constitute a No Call–No Show absence. It is the employee's responsibility to ensure that proper notification is given. Asking another employee, friend, or relative to give this notification is not acceptable, unless there is an emergency which prevents the employee from calling his/her supervisor. Supervisors may request a physician's statement for any illness-related absences for 3 or more consecutive days.

Tardiness and absenteeism are expensive and disruptive, and place an unfair burden on coworkers and the Company. Absences in excess of accrued and approved time off benefits provided by the Company (for example, Vacation Pay, Personal Paid Time Off Pay, and Family Medical/Military Leave) may be considered excessive. **Tardies and/or excessive absences may result in disciplinary action, up to and including termination of employment** and/or may have an adverse effect on evaluation and promotional considerations.

No Call–No Show Absences

"No Call–No Show" means an employee fails to report to work as scheduled and fails to speak directly with his/her supervisor before or within 30 minutes of the beginning of his/her shift. No Call-No Show constitutes grounds for disciplinary action, up to and including termination of employment. Except when there are extraordinary circumstances, if an employee is a No Call–No Show for 2 consecutive business days, the employee will be deemed to have abandoned his/her job and voluntarily resigned his/her employment.

No Call–No Show Absences Following a Leave of Absence

When an employee is released to return to work in any capacity following a leave of absence for an occupational injury, or exhausts any other scheduled and/or available leave of absence, including a leave of absence under the Company's Family Medical/Military Leave Policy, the employee must speak directly with his/her supervisor to seek reinstatement within 2 business days of the employee's release or exhaustion of leave. **If an employee fails to timely speak directly with his/her supervisor to seek reinstatement within 2 business days following his/her release to return to work or exhaustion of any scheduled and/or available leave of absence, such failure will constitute No Call-No Show absences, and the employee will be deemed to have abandoned his/her job and voluntarily resigned his/her employment.**

WORKDAY BREAKS AND SCHEDULES POLICY

If an employee fails to clock out for his/her meal break, the employee may be automatically charged with a 30-minute meal break, at the discretion of management.

All Retail Locations

1. All employees who work a 5-hour shift or longer must take a 30-minute meal break during the shift. The meal break must be taken as close to the middle of the employee's scheduled work shift as possible, so long as the meal break occurs within the first 5 hours of the shift. Employees should consult their supervisors for meal break schedules.
2. The employee's request to decline a meal break should be submitted in writing to his/her supervisor and approved by the supervisor prior to the meal break to be declined. Minors may not decline a meal break or a 15-minute break.
3. Employees are required to clock out before their meal breaks and back in following the meal breaks.
4. All employees shall receive a 15-minute rest break for every 4 consecutive hours scheduled. This break must be taken within the 4-hour period. Employees are to remain on Company property during all 15-minute breaks. Each 15-minute break is to be taken in its entirety; partial breaks are not permitted.
5. No breaks are to be taken in work areas.
6. It is the employee's responsibility to be back in his/her work area promptly after each break or meal break.

Warehouse/Manufacturing Locations

1. All employees who work a 6-hour shift or longer must take a 30-minute meal break during the shift.
2. Employees are required to clock out before their meal breaks and back in following the meal breaks.
3. All employees will receive a 15-minute break for every 4 consecutive hours scheduled. This break must be taken within the 4-hour period. Employees are to remain on Company property during all 15-minute breaks. Each 15-minute break is to be taken in its entirety; partial breaks are not permitted.
4. No breaks are to be taken in work areas.
5. It is the employee's responsibility to be back in his/her work area promptly after each break or meal break.

Office Locations

1. Employees should consult their supervisors for meal break schedules.
2. The employee's request to decline a meal break should be submitted in writing to his/her supervisor and approved by the supervisor prior to the meal break to be declined. Minors may not decline a meal break or a 15-minute break.
3. Employees are required to clock out before their meal breaks and back in following the meal breaks.
4. All employees will receive a 15-minute break for every 4 consecutive hours scheduled. This break must be taken within the 4-hour period. Employees are to remain on Company property during all 15-minute breaks. Each 15-minute break is to be taken in its entirety; partial breaks are not permitted.
5. It is the employee's responsibility to be back in his/her work area promptly after each break or meal break.

Construction/Field Personnel Locations

1. Employees should consult their supervisors for meal break schedules. Minors may not decline a meal break or a 15-minute break.
2. All employees will receive a 15-minute break for every 4 consecutive hours scheduled. This break must be taken within the 4-hour period. Employees are to remain at the worksite during all 15-minute breaks. Each 15-minute break is to be taken in its entirety; partial breaks are not permitted.
3. It is the employee's responsibility to be back in his/her work area promptly after each break.

JURY DUTY POLICY

The Company believes that jury duty is a matter of civic obligation. Full-time Employees, who are called to jury duty, will continue to receive their usual pay for the hours they were scheduled to work, provided the employee remits to the Company any compensation received from the court for jury services, and that the employee reports to work on any day, or part of a day, that the employee is excused from jury duty. The employee may retain any compensation received for mileage to and from jury duty. Any expenses, such as parking and meals, incurred by the employee while on jury duty that are reimbursed by the court may be kept by the employee. Verification of jury duty dates and times may be required.

MILITARY LEAVE POLICY

If an employee is called to Active Duty or to Reserve or National Guard training, or if the employee volunteers for the same, the employee should submit copies of his/her military orders to the employee's supervisor as soon as practicable. The employee will be granted a military leave of absence without pay for the period of military service, in accordance with applicable federal and state laws. An employee's eligibility for reinstatement after military duty or training is completed is determined in accordance with applicable federal and state laws.

If an employee has a parent, child, spouse, or next of kin who is a servicemember (including Active Duty, National Guard and Reserves) or Veteran, and the employee is requesting time off related to that service member's or Veteran's military orders and/or medical condition(s), the employee should refer to the Company's Family Medical and Military Family Leaves Policy for eligibility requirements and other details.

FAMILY MEDICAL AND MILITARY FAMILY LEAVES POLICY

Purpose

The Company recognizes the importance of providing leaves of absence from work to eligible employees to address certain family responsibilities or health concerns. The Company provides qualified employees with up to 12 or 26 workweeks, as applicable, of unpaid family medical leave and/or military family leave in a 12-month period in accordance with the Family and Medical Leave Act ("FMLA"), as amended, and other applicable state and municipal laws. Throughout this policy, these leaves collectively will be called "**Family Medical/Military Leave**".

How Can Family Medical/Military Leave Be Taken?

Family Medical/Military Leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember) over a 12-month period. Leave under this policy may be taken in 12 (or 26, if applicable) consecutive weeks, intermittently (as needed over a 12-month period), or as a reduced work schedule under certain circumstances.

Eligibility for Family Medical/Military Leave

To be eligible for unpaid leave under the Company's Family Medical/Military Leave Policy, an employee must:

1. have worked for the Company for at least 12 months; and

2. have worked at least 1,250 hours during the 12 months prior to the start of the Leave (unless the employee was absent from work while serving in the military); and

3. work at a location where at least 50 employees are employed at the location or within 75 miles of the location.

Reasons for Using Family Medical/Military Leave

An eligible employee may take up to **12 workweeks** of unpaid Family Medical/Military Leave in a 12-Month Period for one or more of the following reasons:

1. For the birth of, and to care for, the employee's newborn child;

2. For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;

3. To care for a parent, child, or spouse (Covered Relation) with a Serious Health Condition;

4. The employee's own Serious Health Condition;

5. For any Qualifying Exigency arising out of the fact that the employee's spouse, child, or parent is in the National Guard, Reserves, or the regular Armed Forces and is called to active duty to a foreign country.

An eligible employee may take up to **26 workweeks** of unpaid Family Medical/Military Leave in a 12-Month Period for the following reason:

6. To care for an ill or injured servicemember of the National Guard, Reserves, or a component of the regular Armed Forces who is the employee's spouse, child, parent or next of kin. The illness or injury must have been incurred during, or aggravated by, active duty.

7. To care for an ill or injured Veteran who was a member of the Armed Forces, National Guard or Reserves at any time during the five-year period preceding the date on which the Veteran undergoes medical treatment, recuperation, or therapy. The illness or injury must have been incurred during active duty.

If an employee and his/her spouse are both employed by the Company, their Family Medical/Military Leave entitlements within a 12-month period will be combined so as not to exceed 12 workweeks (or 26 workweeks if the reason for leave is to care for an ill or injured servicemember).

Family Medical/Military Leave is reserved for an employee's leave of absence for the qualifying reasons identified above.

What is a Serious Health Condition?

A Serious Health Condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment as described below. An employee may take leave for the Serious Health Condition of his/her parent, spouse, son or daughter, and/or for his/her own Serious Health Condition which makes the employee unable to perform any one of the essential functions of the employee's position, and may involve:

1. A period of incapacity of more than 3 consecutive, full calendar days, and any subsequent treatment or incapacity relating to the same condition which requires treatment by a healthcare provider; and/or

2. A condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; and/or

3. Any period of incapacity due to pregnancy (including morning sickness), or for prenatal care, even if treatment by a healthcare provider is not received and the employee is absent from work fewer than 3 consecutive work days; and/or

4. Any period of incapacity or treatment due to a chronic serious health condition, even if treatment by a healthcare provider is not received and the employee is absent from work fewer than 3 consecutive work days; and/or

5. Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; and/or

6. Any period of absence from work to receive multiple treatments by a health care provider; and/or

7. Any period of absence from work to receive treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider.

There may be additional criteria (such as frequency of visits to a health care provider, or follow-up treatment received) for a medical condition to qualify as a Serious Health Condition. An employee or supervisor with questions about whether a condition qualifies as a Serious Health Condition should contact the Company's Benefits Department at (405) 745-1640.

What is a Qualifying Exigency?

An employee, with a spouse, son, daughter, or parent who is in the Armed Forces, U.S. National Guard, or Reserves and is on active duty, or has been notified of an impending call to active duty, to a foreign country, may take up to 12 weeks of leave for certain reasons ("**Qualifying Exigency**") relating to the duty or call to duty. The leave may commence as soon as the individual receives the call-up notice. The Qualifying Exigency must be one of the following:

1. To address issues arising from the short-notice deployment (within 7 days of notice);

2. To attend military events and activities including family support and assistance programs or informational briefings;

3. To arrange for alternative childcare or provide urgent, immediate-need childcare, or to enroll a child/children in a new school or childcare facility, or attend meetings at the school or facility, when such need arises due to the call or order to active duty.

4. To make or update financial or legal arrangements, or act as the covered military member's representative regarding military service benefits;

5. To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or child of the covered military member, provided that the need for counseling arises from the impending call or order;

6. To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment (each instance of rest and recuperation is limited to 5 days of leave);

7. To attend official ceremonies or programs arising out of the covered military member's deployment, or to address issues that arise from the death of a covered military member while on active duty status;

8. To address and engage in additional activities that arise out of active duty or call to active duty, provided that the Company and the employee agree that such leave qualifies as an exigency, and agree to the timing and the duration of the leave.

An employee or supervisor with questions about eligibility or what constitutes a Qualifying Exigency should contact the Company's Benefits Department at (405) 745-1640.

How Does the Company Measure the 12-Month Period?

The Company measures the 12-month period forward from the first day of an employee's Family Medical/Military Leave. Consequently, the employee would be entitled to 12 weeks (or 26 weeks) of Family Medical/Military Leave during the year beginning on the first day Family Medical/Military Leave is taken; the next 12-month period would begin the first day a Family Medical/Military Leave is taken after completion of any previous 12-month period.

Intermittent/Reduced Schedule Leave

Family Medical/Military Leave for a Qualifying Exigency can be taken intermittently or as a reduced schedule. In the case of Family Medical/Military Leave for a Serious Health Condition or Servicemember Care (Reasons for Using Family Medical/Military Leave #3, 4 and 6), intermittent or reduced schedule leave is permitted only if medically necessary.

If an employee requests Family Medical/Military Leave for the birth or placement of a child (Reasons for Using Family Medical/Military Leave #1 and 2), intermittent leave or reduced schedule leave is permitted only if both the employee and his/her supervisor agree.

When intermittent or reduced schedule leave is medically necessary, or requested by the employee and approved, the employee must make a reasonable effort to schedule medical treatment or appointments so as not to unduly disrupt the Company's operations. The employee is expected to consult with his/her supervisor prior to the scheduling of intermittent or reduced schedule leave in order to work out a schedule which best suits the needs of both the Company and the employee.

An employee on intermittent leave must comply with the Company's call-in procedures under the Company's Attendance Policy.

If intermittent or reduced schedule leave is foreseeable the Company may, in its sole discretion, temporarily transfer the employee to another job with equivalent pay and benefits that better accommodates recurring periods of leave than does the employee's regular position.

What Happens to Paid Time Off Benefits While on Leave?

Any accrued but unused paid time off benefits (*i.e.*, Vacation Pay, Personal Paid Time Off, Holiday Pay, and/or Sick Pay, as applicable) will be paid concurrently with (at the same time as) the Family Medical/Military Leave. Employees on Family Medical/Military Leave due to an occupational injury covered under Workers' Compensation or the Texas Injury Benefit Plan will not be required to receive their paid time off benefits.

During Family Medical/Military Leave, an employee will not continue to accrue any paid time off benefits for which he/she is eligible. Such benefits will resume accruing when the employee returns to work.

What Happens to Health Benefits While on Leave?

During Family Medical/Military Leave, the Company will continue to pay its portion of any applicable medical/dental, life, and long-term disability benefit premiums, provided the employee continues to make his/her regularly-scheduled employee premium payments and contributions. An employee on Family Medical/Military Leave should contact the Benefits Department at (405) 745-1640 for additional information regarding premium payments and contributions. Failure of the employee to pay his/her share of premiums or contributions will result in loss of benefits.

An employee must immediately notify the Benefits Department upon returning to work. Failure to do so may result in a loss of benefits.

If the employee does not return to work after the expiration of the Family Medical/Military Leave, the employee will be required to reimburse the Company for payment of any health plan premiums or contributions made by the Company on behalf of the employee, along with any unpaid premiums or contributions attributable to the employee's share of health plan coverage during the Family Medical/Military Leave, unless the employee does not return to work because of: 1) the presence of a Serious Health Condition which prevents the employee from performing the essential functions of his/her job or circumstances beyond the employee's control; 2) because

of the birth of a child; 3) the death or continued Serious Health Condition of a Covered Relation during the Family Medical/Military Leave to care for such Covered Relation; or 4) the serious illness or injury of a covered servicemember/veteran that would entitle the employee to Family Medical/Military Leave.

How Does an Employee Request Family Medical/Military Leave?

An employee must notify the Company of his/her need for Family Medical/Military Leave by contacting the Company's Benefits Department by phone at (405) 745-1640 or in writing using the form provided at the end of this Employee Handbook or given to the employee by his/her supervisor. All required Family Medical/Military Leave forms must be submitted to the respective Company as listed on the form. The employee must also communicate his/her need for Family Medical/Military Leave to his/her direct supervisor.

When the need for Family Medical/Military Leave is foreseeable, the employee must provide the Company with at least 30 days advance notice of the need for leave. When an employee becomes aware of a need for Family Medical/Military Leave fewer than 30 days in advance of the day leave is to begin, the employee must provide notice of the need for the leave on either the same day or the next business day on which he/she learns of the need for leave. Failure to provide timely notice may result in the Company delaying the approval of the employee's Family Medical/Military Leave request.

Even if leave is not requested, if an employee is eligible for Family Medical/Military Leave and is absent from work for an amount of time and reason which qualify for leave under the Company's Family Medical/Military Leave Policy, the employee may be placed on Family Medical/Military Leave, and may not decline or refuse such leave.

If the Family Medical/Military Leave is not approved by the Company due to the employee's failure to comply with the policy, or the employee does not qualify for leave, the employee's absences will not be deemed Family Medical/Military Leave, and the employee will be subject to the Company's Attendance Policy for any time absent from work.

What Certification is Required?

The Company will request medical certification of the employee's/family member's Serious Health Condition, or certification of the Qualifying Exigency or serious injury or illness of the covered servicemember. Such certification will be requested prior to the approval of leave and recertification may be requested periodically or if needed during the leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a delay or denial of Family Medical/Military Leave or a cessation of approved Family Medical/Military Leave.

The Company's human resources professional or leave administrator may directly contact the employee's/family member's health care provider to verify or clarify information provided in the medical certification. The employee's direct supervisor will not contact the health care provider. Before the Company contacts the health care provider, the employee will be a given an opportunity to resolve any deficiencies in the medical certification.

What Must an Employee Do When Calling In Due to a Family Medical/Military Qualifying Reason?

When an employee needs to take a leave of absence from work using Family Medical/Military Leave that has been previously approved (See "How Does an Employee Request Family Medical/Military Leave?", above), the employee must specifically state that he/she is using Family Medical/Military Leave or state the reason which

again qualifies him/her for the Family Medical/Military Leave. **Calling in "sick" without providing more information will not be considered sufficient notice to trigger the Company's obligations under this Policy.** An employee on Family Medical/Military Leave must comply with the Company's call-in procedures under the Company's Attendance Policy.

The employee must periodically contact his/her supervisor during the Family Medical/Military Leave regarding his/her status and intent to return to work.

What Actions are Necessary to Return to Work from Leave?

When an employee exhausts his/her scheduled and/or available Family Medical/Military Leave, the employee must speak directly with his/her supervisor to seek reinstatement within 2 business days following the exhaustion of the employee's scheduled and/or available Family Medical/Military Leave. The employee is also required to provide medical certification of his/her ability to return to work after Family Medical/Military Leave is taken for the employee's own Serious Health Condition or for the birth of a child.

- **If an employee fails to timely speak directly with his/her supervisor to seek reinstatement within 2 business days following his/her release to return to work or the exhaustion of the employee's scheduled and/or available Family Medical/Military Leave, the absences will constitute No Call-No Show absences under the Company's Attendance Policy, and the employee will be deemed to have abandoned his/her job and voluntarily resigned his/her employment.**

- An employee who timely speaks directly with his/her supervisor within 2 business days following his/her release to return to work or the exhaustion of his/her scheduled and/or available Family Medical/Military Leave, provides the required medical certification, and returns to work as scheduled, is entitled to return to his/her previous or equivalent position without loss of benefits or pay rate.

If at the end of a Family Medical/Military Leave an employee is unable to return to his/her previously-held position, and the Company has fulfilled its obligations, if applicable, under the ADA, the employee may be terminated from his/her employment. If terminated, the employee may be eligible for rehire to a position for which the employee is qualified, if available, and only if the employee has no greater limitations than those with which the employee was hired, if any. The rate of pay will be commensurate with the position regardless of what the employee earned in his/her previously-held position.

Key Employees

Some salaried employees may be considered Key Employees under the Family and Medical Leave Act. A "**Key Employee**" is a salaried, eligible employee who is among the highest-paid 10 percent of all employees employed by the Company within 75 miles of the employee's work site. If a salaried employee is a Key Employee, and takes a leave of absence under the Company's Family Medical and Military Family Leaves Policy, the Company may deny job restoration at the end of this leave if it determines that such denial is necessary to prevent substantial and grievous economic injury to the operations of the Company. Such a determination will be made as soon as practicably possible and communicated to the employee.

A Key Employee who is notified by the Company that he/she will be denied re-employment will retain the right to take Family Medical/Military Leave and enjoy all the benefits that would otherwise be accorded to him/her during the leave period. If the Key Employee's leave has already commenced when the Company gives notice of its intent to deny restoration, the Key Employee will have a reasonable time in which to return to work.

Also, an employee is entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the Company's notice. The Company would then determine whether there would be substantial and grievous economic injury from reinstatement.

State Leave Laws

Some states have family, medical and/or military leaves for which employees working in those states may be eligible. Employees seeking leave are encouraged to contact their supervisor or the Benefits Department at (405) 745-1640 to determine if there is a state-mandated leave for which they are eligible.

5. EMPLOYEE CONDUCT

EMPLOYEE CONDUCT POLICY

All employees are expected to accept certain responsibilities, exhibit a high degree of personal integrity, and conduct themselves in an appropriate manner at all times. Employees are expected to respect others and refrain from any conduct that might be harmful to coworkers or the Company, or that might be viewed unfavorably by current or potential customers.

Conduct that the Company deems unacceptable includes, but is not limited to, the following:

1. Poor job performance or other behavior that does not meet the requirements of the position, or failing to meet management's expectations.

2. Poor customer service.

3. Excessive absences or tardies.

4. Insubordination, refusal to comply with a supervisor's instructions, or failure to perform assigned duties.

5. Failure to perform assigned duties such as housekeeping duties to eliminate tripping, slipping, falling, and other hazards.

6. Theft, fraud, dishonesty, unauthorized discounts, fraudulent refunds, writing insufficient-funds checks, destruction of merchandise or property, violation of criminal laws, or any other conduct that results in a loss or increased risk to the Company.

7. Being impaired by, or under the influence of, Drugs or Alcohol on the Company's premises or job site.

8. Using language that is considered threatening, intimidating, coercive, abusive, profane, or inappropriate.

9. Verbal or physical conduct in violation of the Company's Policy Against Inappropriate Conduct.

10. Immoral or indecent conduct on Company property, or while representing the Company.

11. Failing to comply with the Company's Safety Rules.

12. Fighting, horseplay, practical jokes, disorderly or other conduct which may endanger any employee's well-being or business operations.

13. Use of personal cellular phones (except in an emergency or with permission of the employee's supervisor) or other personal electronic devices (e.g., iPod, MP3 player, etc.) while on duty.

14. Interfering with the work performance of fellow employees, or creating an atmosphere that hinders or interferes with Company operations, or conduct that impacts the work environment in a negative manner.

15. Falsification of Company records, including but not limited to employment applications or time records.

16. Use of the Company's material, time or equipment for unauthorized purposes or for personal use.

17. Working off the clock, failing to properly clock in or out, or clocking in or out for another employee.

18. Engaging in such other conduct as may be inconsistent with any of the Company's policies, procedures, practices, or rules.

Any employee who violates this Employee Conduct Policy, or any other Company policy, procedure, practice, or rule may, in the sole discretion of management, be subject to disciplinary action, up to and including termination of employment. Nothing in this Employee Conduct Policy alters the at-will employment relationship between the Company and its employees.

POLICY AGAINST INAPPROPRIATE CONDUCT

The Company prohibits unlawful harassment and discrimination and other conduct that is inappropriate for the workplace. "**Inappropriate Conduct**" means comments or actions that are inappropriate for the workplace, disrupt and/or interfere with work performance, or negatively or stereotypically relate to an employee's race, color, religion, gender, pregnancy, national origin, age, disability, Veteran's status, or other characteristics protected by law. Inappropriate Conduct includes unlawful harassment and discrimination, as well as unlawful sexual harassment as defined below.

Harassment and Discrimination

The Company is committed to maintaining a work environment that is free from unlawful harassment and discrimination as well as other inappropriate actions and comments that do not rise to the level of unlawful harassment or discrimination. The Company prohibits harassment and discrimination on the basis of race, color, religion, gender, pregnancy, national origin, age, disability, Veteran's status, or other characteristics protected by law. The Company also prohibits **"Inappropriate Sexual Conduct"** which is a form of Inappropriate Conduct and includes unwelcome sexual advances, requests for sexual favors, and other verbal, graphic, or physical conduct of a sexual nature where:

1. submission to such conduct is either an express or implied term or condition of an individual's employment;

2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or

3. such conduct creates a hostile or offensive working environment.

When management makes a good faith determination that an employee has engaged in Inappropriate Conduct, management is obligated to take, and will take, those steps that are reasonably necessary to ensure that the Inappropriate Conduct does not occur again. Any person who engages in Inappropriate Conduct is acting outside the scope of any express or implied authority granted to such person by the Company. Any employee who engages in Inappropriate Conduct will be subject to disciplinary action, up to and including termination of employment.

Reporting Inappropriate Conduct

If an employee feels that he/she has been subjected to Inappropriate Conduct in violation of the Company's Policy Against Inappropriate Conduct, he/she must **immediately** report the conduct to his/her supervisor, **OR** any other appropriate member of management, **OR** the Company's **Human Resources Department at (877) 303-4547**. An employee need not first make a report to his/her supervisor in order to contact another appropriate member of management or the Company's Human Resources Department. For example, an employee may first make a report to the Company's Human Resources Department. The Human Resources Department will then ensure that the complaint is referred to the appropriate member of management. All complaints of Inappropriate Conduct that appear to violate the Company's Policy Against Inappropriate Conduct will be promptly and thoroughly investigated by an appropriate member of management. If management makes a good faith determination that an employee has violated the Company's Policy Against Inappropriate Conduct, it will then take those steps that are reasonably necessary to ensure the Inappropriate Conduct does not occur again. **The Company prohibits retaliation against any employee who reports Inappropriate Conduct.**

FRATERNIZATION POLICY

The Company prohibits Fraternization between supervisors and subordinates. **"Fraternization"** means any socializing between a supervisor and subordinate outside of work for dating or illicit purposes, or the engaging by such individuals in any form of dating or illicit relationship during or outside of work, or other socializing which disrupts the work environment, or creates actual or apparent conflicts of interest. Supervisors engaging in Fraternization will be subject to disciplinary action, up to and including termination of employment.

CONFIDENTIALITY POLICY

All employees must treat any information relating to the business of the Company or any of its related entities, corporations, partnerships, joint ventures, directors or customers as confidential and must not divulge any of this information to outside parties without the prior written consent of a supervisor. Nor shall any such confidential information be utilized for the personal gain of any employee. All such information must be kept completely confidential during, and subsequent to, employment with the Company. Failure to follow this Confidentiality Policy shall subject the offending employee to disciplinary action, up to and including termination of employment and such other available legal penalties. The following is intended as a guide to the types of confidential information and material:

- Matters of a business nature such as information about disbursements, costs, revenues, pricing, profits, markets, lists of customers, business data regarding customers and suppliers, and plans for future expansion or development;

- Matters of a non-public, technical nature such as computer programs, data files, software and supporting documentation, training programs, delivery processes, procedure manuals, and related methods or technologies;

- Confidential data about employees, including employee pay rates and performance evaluations; and

- Any information that if disclosed, could adversely affect the Company's business.

BULLETIN BOARDS POLICY

Bulletin boards have been installed in each store and on campus throughout the warehouses and break rooms. These Employee Information Boards are solely reserved for Company matters of employee interest and

information related to employment with the Company. Employees may not post information on these boards. Any information not posted by management will be removed.

In some locations, additional bulletin boards may be reserved for employees to post information of interest to fellow employees. Employees should confirm that a bulletin board is for employee use before posting information on it. These boards will be monitored by management. Any posting that contains information deemed inappropriate, disruptive, or in violation of Company policy will be removed. Postings will be removed every Friday regardless of when the postings were placed on the board.

SOLICITATIONS AND DISTRIBUTIONS OF LITERATURE POLICY

In the interest of maintaining a proper business environment and preventing interference with work and any inconvenience to others, employees may not distribute literature or printed materials of any kind, sell merchandise, solicit financial contributions, or solicit for any other cause during work time. During work time, items of this nature shall not be in the immediate physical possession or control of the employee, and must either be kept in the employee's personal locker or outside of the physical work place, (*i.e.*, an employee's automobile). Employees who are not on work time (*e.g.*, those on break) may not solicit for any cause or distribute literature of any kind to employees who are on work time. Employees may not sell merchandise on Company property. Furthermore, employees may not distribute literature or printed material of any kind in work areas at any time.

Non-employees are likewise prohibited from distributing material or soliciting employees on Company premises at any time, unless prior approval is obtained from the Company.

LOITERING POLICY

In the interest of maintaining a safe and efficient working environment, employees may not enter Company property more than 30 minutes before they are scheduled to clock in and/or report to work. Further, employees may not remain on Company property more than 30 minutes after clocking out and/or completing their workday. Company security or management will direct employees found on Company property in violation of this Policy to immediately leave. Employees violating this Policy may be subject to disciplinary action, up to and including termination of employment.

SMOKING POLICY

To maintain a safe and comfortable working environment and to ensure compliance with applicable regulations, smoking or using smokeless tobacco in the Company's offices, warehouses, or other work facilities is strictly prohibited. Smoking and smokeless tobacco are only allowed in designated smoking areas. Employees smoking or using smokeless tobacco in any nonsmoking area may be subject to disciplinary action, up to and including termination of employment.

GIFTS AND GRATUITIES POLICY

Employees, regardless of their position, may not accept for their personal benefit, gifts, gratuities, trips, cash, samples, etc., from anyone doing business with or in any way serving the Company. "**Gifts**" and "**Gratuities**" include tickets to entertainment events, kick backs in the form of money or merchandise, special discounts, discontinued samples, vendor paid trips and Christmas gifts. All such items received become the property of the Company. The Company strongly recommends that buyers, managers, department heads, and all other employees pay for their own meals when dining with anyone doing business with or in any way serving the Company. It is also suggested that employees should be with their families at the end of the workday, and unless the situation is unique, should avoid after-hour engagements with anyone doing business with or in any way serving the Company.

EMPLOYEES SELECTED TO REPRESENT THE COMPANY

It is a privilege for an employee to be selected to represent the Company outside of the workplace. Every employee selected to perform any task that requires leaving the workplace must remember that appropriate, professional, and responsible behavior is essential at all times. Every person traveling for the Company represents the Company at all times.

APPEARANCE AND DRESS CODES POLICY

Favorable personal appearance is an ongoing requirement of employment with the Company. Hairstyles, clothing and jewelry should conform to the best standards of business and professional modesty in order to ensure a comfortable and professional working environment for all employees. Clothing, jewelry, and hairstyles should not be excessive or extreme in appearance. Where applicable, clothing, jewelry, and hairstyles should not change so dramatically that for identification purposes, an employee's Company-issued I.D. Badge no longer matches the appearance of the person. Furthermore, when an employee's appearance causes disruption in the workplace and/or the creation of an uncomfortable working environment for others, corrective, disciplinary action will result. Radical departures from conventional dress, personal grooming and appearance, and jewelry attire are not permitted.

Employees who violate the Company's Appearance and Dress Codes Policy may be asked to leave the workplace and change their appearance before returning to work. Time away from work will be unpaid. Failure to comply with the standards in this Policy will result in disciplinary action, up to and including termination of employment.

All Retail Store Locations Dress Code
(EXCLUDING MARDEL)

Each Company may require employees to wear Company attire such as a monogrammed Company smock, vest, or shirt, and a nametag. Employees must always dress and keep personal hygiene standards professional in order to properly greet the public.

Store managers have final discretion as to what is acceptable. Though not all inclusive, the following list is **not** appropriate attire for the stores:

1. Shorts of any type (excluding tailored walking shorts and short suits, which must be worn with hose and must be no shorter than 4 inches above the top of the knee cap).
2. Muscle shirts, halter-tops, crop tops (*i.e.*, tops which show any portion of the midriff), and tank tops.

3. Sleeveless shirts (excluding tailored blouses and dresses).
4. Dresses, culottes, skorts, or skirts that are shorter than 4 inches above the top of the kneecap.
5. Sandals.
6. Foul, offensive, or controversial clothing and/or accessories.
7. Sweat suits, lounge wear, or jogging suits.
8. Frayed or torn clothing or clothing with visible holes or patches.
9. Pants or skirts that touch or drag on the floor.
10. Spandex pants or leggings unless covered by a shirt or dress that reaches mid-thigh.
11. Visible undergarments.
12. Visible tattoos.
13. Females - Visible body piercing beyond two earrings in each ear.
14. Males - Earrings. The wearing of earrings is unacceptable.

All Mardel Retail Store Locations Dress Code

Mardel's retail environment necessitates a high standard of appearance. Employees must always dress and keep personal hygiene standards professional in order to properly greet the public.

Men are required to wear collared shirts with a tie, dress slacks or Dockers-style pants, and appropriate shoes (no gym or tennis-style shoes). Shirts must be tucked in and buttoned up to the collar.

Women are required to wear professional blouses or pullovers, dress slacks, dresses or skirts, and appropriate shoes (no gym or tennis-style shoes). Dress sweaters, blazers, jackets or vests may be appropriate wear (no denim of any color).

Store managers have final discretion as to what is acceptable. Though not all inclusive, the following list is **not** appropriate attire for Mardel stores:

1. Shorts of any type (including tailored walking shorts, culottes, skorts and short suits).
2. Muscle shirts, halter-tops, crop tops (i.e., tops which show any portion of the midriff, including when arms are raised), and tank tops.
3. Sleeveless shirts (including tailored blouses and dresses).
4. Dresses or skirts that are shorter than 2 inches above the top of the kneecap.
5. Bare legs (pantyhose, stockings or tights must be worn with skirts or dresses).
6. Open toe or open heel shoes, including sandals.
7. Foul, offensive or controversial clothing and/or accessories.
8. Any article of denim clothing regardless of color.
9. T-shirts or sweatshirts.
10. Sweat suits, lounge wear, or jogging suits.
11. Stretch pants or Spandex pants.
12. Flannel shirts or camp shirts.
13. Wide neck blouses, scoop necks, or deep cut v-necks.
14. Tight fitting or revealing clothing.
15. Visible undergarments.
16. Overalls.
17. Hats.
18. Frayed or torn clothing or clothing with visible holes or patches.
19. Pants or skirts that touch or drag on the floor.
20. Visible tattoos.
21. Males - visible body piercing, including earrings.
22. Females - visible body piercing beyond two earrings per ear.
23. Males - hair longer than the bottom of the shirt collar.

Warehouse/Manufacturing Locations Dress Code

Clothing should be only loose enough to be comfortable. Employees must always dress and keep personal hygiene standards high in consideration for their coworkers.

Supervisors have final discretion as to what is acceptable. Though not all inclusive, the following list is **not** appropriate attire:

1. Shorts that are shorter than 4 inches above the top of the kneecap.
2. Muscle shirts, halter-tops, crop tops (i.e., tops which show any portion of the midriff), and tank tops.
3. Sleeveless shirts (excluding tailored blouses and dresses).
4. Dresses, culottes, skorts, or skirts that are shorter than 4 inches above the kneecap.
5. Sandals or any open-toed shoe.
6. Foul, offensive or controversial clothing and/or accessories.
7. Frayed or torn clothing or clothing with visible holes or patches.
8. Pants or skirts that touch or drag on the floor.
9. Visible undergarments.
10. Bicycle/exercise pants without being covered by shorts of appropriate length.
11. Spandex pants or leggings unless covered by a shirt or dress that reaches mid-thigh.

Office Locations Dress Code

Listed below are minimum dress standards for office personnel. Each location or department may have additional requirements. Employees must always dress and keep personal hygiene standards high in consideration for their coworkers.

Supervisors will have final discretion as to what will be acceptable. Although not all inclusive, the following list is **not** appropriate attire:

1. Shorts of any type (excluding tailored walking shorts and short suits, which must be no shorter than 4 inches above the top of the kneecap. Wearing of hose is recommended).
2. Muscle shirts, halter-tops, crop tops (i.e., tops which show any portion of the midriff), and tank tops.
3. Sleeveless shirts (excluding tailored blouses and dresses).
4. Dresses, culottes, skorts or skirts that are shorter than 4 inches above the top of the kneecap. Wearing of hose is recommended for dresses, culottes, skorts or skirts.
5. Thong-type sandals or "flip-flops".
6. Foul, offensive or controversial clothing and/or accessories.
7. Sweat suits, lounge wear, or jogging suits.
8. Frayed or torn clothing or clothing with visible holes or patches.
9. Pants or skirts that touch or drag on the floor.
10. Visible undergarments.
11. Spandex pants or leggings unless covered by shirt or dress that reaches mid-thigh.

Construction/Field Personnel Dress Code

Listed below are minimum dress standards for construction/field personnel. All construction personnel, while on the job site, MUST at all times wear a hard hat and steel-toed boots. Employees must always dress and keep personal hygiene standards high in consideration for their coworkers.

Supervisors have final discretion as to what is acceptable. Although not all inclusive, the following list is **not** appropriate attire:

1. Shorts that are shorter than 4 inches above the top of the kneecap.
2. Muscle shirts, halter-tops, crop tops (i.e., tops which show any portion of the midriff), and tank tops.
3. Sleeveless shirts (excluding tailored blouses and dresses).
4. Sandals or any open-toed shoe.
5. Foul, offensive or controversial clothing and/or accessories.
6. Frayed or torn clothing or clothing with visible holes or patches.
7. Pants or skirts that touch or drag on the floor.
8. Visible undergarments.
9. Bicycle/exercise pants without being covered by shorts of appropriate length.
10. Spandex pants or leggings unless covered by a shirt or dress that reaches mid-thigh.

USE OF COMPUTERS, EMAIL, INTERNET, PHONES AND VOICEMAIL POLICY

Providing, exchanging and retrieving information electronically by utilizing computer technology presents valuable opportunities for the Company. While employees are encouraged to use this technology, its use carries important responsibilities. Employees are expected to exhibit the same high level of ethical and business standards when using this technology as they do with more traditional workplace communication resources.

Computers, computer systems and electronic media equipment (including computer accounts, voicemail, laptop computers, printers, networks, software, electronic mail, Internet and World Wide Web access connections) at the Company are provided for the use of employees for Company business-related use. It is the responsibility of employees to see that these information systems are used in an efficient, ethical and lawful manner.

The use of information systems is a privilege extended by the Company, which may be withdrawn at any time. An employee's use of computer systems may be suspended immediately upon discovery of a possible violation of this Policy. A violation of the provisions of this Policy may result in disciplinary action, up to and including termination of employment.

Computer Usage

The following Policy relates to the responsible use of computers and computer service and electronic media resource at the Company:

1. These resources are Company property and are to be used solely for business purposes. Access by employees is authorized by the Chief Information Officer and can be revised, restricted or revoked at any time.

2. Fraudulent, harassing, threatening, discriminatory, inappropriate, sexually explicit or obscene messages and/or materials are not to be transmitted, printed, requested or stored. Chain letters, solicitations and other forms of mass emails are not permitted. Email may not be used to solicit donations or support on behalf of individuals or organizations.

3. Employees are responsible for protecting their own passwords. Sharing user I.D.s, passwords, account access codes or numbers is discouraged. Employees may be held responsible for misuse that occurs through such unauthorized access.

4. The Company provides an electronic mail system and network connections for internal and external business communication and data exchange purposes. Although employee passwords are required for access, these systems cannot guarantee confidentiality. In fact, use and access may be monitored and tracked by management at any time. Even though files, data, or messages may appear to be

deleted, procedures by the Company to guard against data loss may preserve material for extended periods of time.

5. In order to maintain and assure Company access to Company data, no employee is permitted to use encryption devices on a Company computer without express written authorization from the Chief Information Officer. Any employee authorized to use encryption-coding devices and other security protection devices must provide the applicable keys and codes in a sealed envelope to the Chief Information Officer where they will be retained in a secure environment.

6. Introducing or using software designed to destroy or corrupt the Company's computer system with viruses or cause other harmful effects is prohibited. Employees are required to use the Company provided anti-virus software.

Software and Software Licensing

Only software provided by the Company is permitted to be used on Company computers.

1. All software on Company computers and networks must be installed, used and properly licensed in accordance with the software license terms or other applicable agreements. This includes all off-the-shelf and custom-developed software, as well as shareware, freeware and public domain programs.

2. File sharing programs are prohibited.

3. No software should be downloaded and/or installed except by the Information Services group. Appropriate departmental consent is required.

4. Software audits will be performed periodically and all unauthorized software will be removed. As unauthorized software is often the source of computer viruses, all unauthorized software for example - AOL, Instant Messaging (IM), any Internet multimedia software, games, etc. will be removed.

Portable Computers and Storage Devices

Employees in the possession of portable laptop, notebook, handheld, and other transportable computers containing confidential or Company information must not leave these computers unattended at any time unless the information is stored in encrypted form.

Employees in the possession of transportable computers containing unencrypted confidential or protected Company information must not check these computers in airline luggage systems or with hotel porters or leave them unattended at any time. These computers must remain in the possession of the employee as hand luggage.

Whenever confidential or Company information is written to a floppy disk, magnetic tape, smart card, or other storage media, the storage media must be suitably marked and secured. When not in use, this media must be stored in locked safe, locked furniture, or a similarly secured location. Employees at remote working locations must promptly report to their supervisor and Information Services any damage to or loss of Company computer hardware, software, or sensitive information that has been entrusted to their care.

Email Usage

Employees are permitted to use the Company's email system only as provided below. All messages distributed via the Company's email system, even personal emails, are Company property. Employees must not have an expectation of privacy in anything that the employee creates, stores, sends or receives on the Company's email system. An employee's email can be monitored without prior notification if the Company deems necessary. If there is evidence that an employee is not adhering to the proper use of email, the Company reserves the right to take disciplinary action, up to and including termination of employment.

Employees are prohibited from:

1. Sending or forwarding emails containing defamatory, offensive, discriminatory, inappropriate, or obscene remarks. If an employee receives an email of this nature, the employee must promptly notify his/her supervisor.

2. Forwarding a message or copy of a message or attachment belonging to another user without acquiring permission from the user.

3. Sending unsolicited email messages, jokes, anecdotes, chain mail, non-work related photos or mass email.

4. Forging or attempting to forge email messages, or disguise or attempt to disguise the employee's identity when sending email.

Employees must take the same care in drafting an email as they would for any other communication. Confidential information should not be sent via email.

Although the Company's email system is meant for business use, the Company allows personal usage if it is reasonable and does not interfere with business operations.

Internet Usage

The Company requires that employees conduct themselves honestly and appropriately on the Internet. Employees must respect the copyrights, software licensing rules, property rights, privacy and prerogatives of others, just as the employee would in any other business dealings. Employees must understand that all existing Company policies apply to the employees' conduct on the Internet, especially those policies that deal with intellectual property protection, privacy, misuse of Company resources, harassment, information and data security and confidentiality.

The Company has software and systems in place that can monitor and record all Internet usage. Employees need to be aware that the Company's security systems are capable of recording (for each and every user) each World Wide Web site visit, each chat, newsgroup or email message and each file transfer in or and out of the Company's internal networks. Expect that the Company will do so at any time.

The Company has the right to inspect any and all files stored in private areas of the Company's networks in order to assure compliance with the Company's Computer Usage policy.

The display of any kind of sexually explicit image or document on any Company system is a violation of the Company's policies and is prohibited. Also, sexually explicit material may not be archived, stored, distributed, edited or recorded using Company networks or computing resources.

The Company uses software and data to identify inappropriate or sexually explicit Internet sites. The Company may block access from within the Company's networks to all such sites of which the Company is

aware. If an employee accidentally connects to a site that contains sexually explicit or offensive material, the employee must disconnect from the site immediately, regardless of whether that site was previously deemed acceptable by the Company's screening or rating program.

The Company's Internet facilities and computing resources must not be used knowingly to violate the laws and regulations of the United States or any other nation, or the laws and regulation of any state, city, province or other local jurisdiction in any material way. Use of any Company resources for illegal activity will result in immediate termination of employment.

No employee may use the Company's Internet facilities to deliberately propagate any virus, worm, Trojan horse or trap door program code.

No employee may use the Company's Internet facilities knowingly to disable or overload any computer system or networks or to circumvent any system intended to protect the privacy or security of another user.

The use of the Company's Internet access facilities to commit infractions (such as misuse of Company assets or resources, harassment, unauthorized public speaking, or misappropriation or theft of intellectual property), is prohibited by general Company policy and will be sanctioned under the relevant provisions of the Employee Handbook.

Use of news sites and news briefing services is permissible in the interest of keeping the Company and employees well informed.

The Company will comply with reasonable requests from law enforcement and regulatory agencies for logs, diaries and archives on individual Internet activities.

Employees with Internet access may download software with direct business use only and must arrange to have it properly licensed and registered. Downloaded software must be used according to the terms of its license. Entertainment software or games may not be downloaded and employees may not play games against opponents over the Internet. Images or videos may not be downloaded unless there is an explicit business-related use for the material.

Employees must schedule communication intensive operations, such as large file transfers, video downloads, mass emails and similar activities for off-peak times as defined by the Company.

The Company has installed appropriate firewalls, proxy Internet address screening programs and security systems to assure the safety and security systems of the Company's networks. Any employee who attempts to disable, defeat or circumvent any Company secured facility is subject to immediate dismissal.

Computers that use their own modems to create independent data connections evade the Company's network security mechanisms, allowing an individual computer's private connection to an outside computer to be used by an attacker to compromise any Company network to which that computer is attached. Accordingly, any computer used for independent dial up or leased-line connection to an outside computer or network must be physically isolated from the Company's internal networks. (Major on-line service and content providers may be accessed via firewall-protected Internet connections, making unsecured direct dial-up connections generally unnecessary). Only those Internet service and functions with documented business purposes will be enabled at the Internet firewall.

Cell Phone or Smart Phone Usage

All Company issued cell phones are subject to the same provisions within this Policy for computer, email, telephone, internet, and voicemail usage. Personal phones connected to the Company network are also subject to the same provisions within this Policy, with respect to protection of Company security, contacts, documents, and other data. Use and access can be monitored and tracked by management at any time without notice to the employee.

Any Company issued or personal phone connecting to the Hobby Lobby network that is lost or stolen should be immediately reported to the Information Services Help Desk for data loss mitigation.

Telephone Usage

The Company's telephones are for business use only. Supervisors, in their sole discretion, may choose whether or not personal telephone calls may be made or received during business hours. If an employee's supervisor allows personal phone calls from friends and relatives, such should be kept to a minimum. Of course, emergency phone calls are permitted. Employees are prohibited from making personal long distance calls at the Company's expense.

Voicemail Usage

Voicemail is a resource provided by the Company and is the property of the Company. Its use is solely for business purposes.

The use of voicemail is a privilege extended by the Company. Voicemail use may be suspended immediately upon the discovery of a possible violation of this Policy. A violation of the provisions of this Policy may result in disciplinary action, up to and including termination of employment.

Harassing, threatening, discriminatory, inappropriate, sexually explicit or obscene messages are not to be transmitted or stored. The use of voicemail for any reason other than legitimate business purposes of the Company is prohibited.

Employees are responsible for protecting access to voicemail. Employees are discouraged from sharing voicemail. Employees may be held for responsible for misuse that occurs through unauthorized access.

Voicemail is intended for business use and as such does not offer any of the privacy protections of a personal system. Select Company personnel will have access to all employees' voicemail. If there is a business necessity, a manager or supervisor may access the system. While the concept of business necessity and a respect for legitimate confidentiality guide the Company's actions, outsiders may not share these concerns. The Company encourages all employees to use passwords and encryption with prior approval to decrease the likelihood that unauthorized people will be able to access employees' voicemail. Unfortunately, these methods are not foolproof. For this reason, employees are encouraged to be cautious when leaving messages on voicemail systems.

Use and access can be monitored and tracked by management at any time and without notice to employees. Even though messages may appear to be deleted, procedures by the Company to guard against data loss may preserve material for extended periods of time. Access to voicemail and voicemail records will also be provided to third parties, such as law enforcement, when requested.

Any activity that could damage the Company's reputation or potentially put employees and the Company at risk for legal proceedings by any party is prohibited.

Online Interaction with Customers

In an effort to resolve customer service issues in a consistent manner, employees should refrain from responding to messages posted online by customers. Instead, employees should refer all such matters to the Customer Service Department as necessary.

6. HEALTH, SAFETY, AND OCCUPATIONAL INJURIES

SAFETY RULES

The following Safety Rules are for the safety of all employees. Although there is no way to identify every possible rule to ensure the complete safety of all employees, the following is a partial list included in the Company's Safety Rules. Management may identify additional Safety Rules that are specific to a particular job or task. **Employees who violate any of the Company's Safety Rules will be subject to disciplinary action, up to and including termination of employment.**

1. Always maintain attentiveness to the work environment to avoid open and obvious conditions that may result in injuries if the employee is inattentive.
2. No riding on manual (non-automated) pallet jacks or picking carts.
3. Do not throw bands from boxes on the floor.
4. Do not push a pallet jack; always pull the jack unless you are pushing pallets back in the bays.
5. Do not walk across a pallet on the floor, step around it.
6. Pay extra attention to what you are doing when using a box knife.
7. Do not break tape with your teeth; use a pencil or a box knife.
8. Be alert at all times for forklifts. Yield and be cautious.
9. Do not ride as a passenger on the forklifts.
10. Do not jump in or out of the dock doors.
11. Always lift with your legs, not your back.
12. If required by your department, you must wear a back belt.
13. Be sure that you stay at least 10 feet away from forklifts when you are lifting in the warehouse racks.
14. Do not lean pallets against walls, structure poles or merchandise.
15. Be sure that pallet jacks are in the down position before loading merchandise.
16. No horseplay will be allowed.
17. Do not climb on racks.
18. Ensure that ladders are in the locked position before using.
19. Do not drop pallets on the floor; pallets could bounce up and injure an employee.
20. Do not lean dock plates against walls, structure poles or merchandise.
21. Use correct dock plate when loading or unloading trailers with forklift.
22. Only licensed operators are allowed to operate forklifts or rider pallet jacks.
23. Forklift drivers should sound horn when approaching people, blind corners and at all intersections.
24. Drive all forklifts slowly, especially in the main aisle ways.
25. Forklifts should be driven with forks down, slightly off the floor.
26. Never lift up a person on the forks without a personnel cage.
27. Forklifts are only allowed in trailers when approved by management and trailer wheels are properly chocked.
28. Forklifts should be driven in reverse, except when putting pallets in bays.
29. Never operate machinery unless all guards and safety devices are in place and in proper operating order.
30. Keep all equipment in safe working condition. Never use defective tools or equipment.
31. Report any defective tools or equipment to your supervisor.
32. Maintenance, unjamming, and adjustments of equipment are to be made only when the equipment is turned off and all power sources have been disconnected.
33. Compliance with all federal, state, and governmental regulations, including OSHA rules is required.
34. Do not stand or sit on any equipment that is not designed for that purpose.
35. Do not leave materials in aisles or walkways.

36. All machinery should be turned off when not in use.
37. Loose clothing or jewelry should not be worn around any rotating machinery. Likewise, long hair should be secured around any machinery.
38. Only employees 18 years of age or older, and designated by management as qualified, may maintain the key for, operate, and unload trash compactors and cardboard balers. Under no circumstances may such designated person(s) leave the key in the equipment when not in use or give the key to any Minor or unauthorized person.
39. Only employees 18 years of age or older may use power-driven staple guns.
40. Only employees 18 years of age or older may operate any heavy equipment, including floor jacks, forklifts, or any other machinery that may be dangerous.

SAFETY EQUIPMENT POLICY

The Company may provide safety equipment for the protection of employee health. All employees must wear or use the appropriate equipment. Employees should consult their supervisor as to which of the following equipment they are required to use:

- Back Belts: The Company requires employees to wear back belts in some of its manufacturing and warehouse facilities. Employees should discuss this requirement with their supervisor. Also, back belts are available upon request.

- Safety Glasses: The Company requires employees to wear safety glasses in many of its manufacturing facilities, including frame departments. Employees who are required to wear safety glasses, and who wear prescription glasses, must have plastic shield guards on the sidepieces of their glasses.

- Safety Gloves: The Company may require the use of cut resistant gloves when handling glass. All store frame shop employees will have gloves issued to them for mandatory use.

- Ear Plugs: The Company requires employees to wear earplugs to protect their hearing in many of its manufacturing facilities.

- Respirators: The Company requires employees working in some manufacturing areas to wear respirators.

WEAPONS POLICY

Employees are prohibited from carrying or possessing any Weapon, whether concealed or unconcealed, upon or about their person or in a purse or other container while on Company property (including parking lots) or while acting within the scope of Company business, without prior written consent from the Company. This policy applies equally to anyone who has a license from any state to carry any Weapon, regardless of whether the Weapon is concealed. This includes, but is not limited to, those individuals carrying concealed handguns pursuant to any license or permit issued by any state or other authority, other than duly licensed peace officers or security personnel in the lawful performance of their official duties. Violation of this Policy may result in disciplinary action, up to and including termination of employment. The term **"Weapon"** means any pistol, revolver, shotgun or rifle whether loaded or unloaded, or any dagger, bowie knife, switchblade knife, spring-type knife, sword cane, knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, blackjack, loaded cane, billy club, hand chain, metal knuckles, or any other offensive Weapon, whether such Weapon be concealed or unconcealed.

WORKPLACE SEARCHES POLICY

To safeguard the property of employees, customers, and the Company, and to carry out the Company's Drug and Alcohol Policy as well as the Company's Weapons Policy, the Company has adopted this Workplace Searches Policy. The Company reserves the right to question employees and all other persons entering and leaving the Company's premises, and to inspect any packages, parcels, purses, handbags, briefcases, lunch boxes, or other personal property, automobiles in the parking lot or on Company property, or any other possessions or articles carried to and from Company property. As a condition of employment, employees, upon request, must provide all such personal property for inspection or search. All property in the workplace is considered Company property and subject to search. In addition, the Company reserves the right to search any employee's office, desk, files, locker, or any other area or article on Company premises. Thus, it should be noted that all offices, desks, files, lockers, and so forth, are the property of the Company, and are issued for the use of employees only during their employment with the Company. Inspections may be conducted at any time at the discretion of the Company.

In conjunction with implementing this Policy, the Company has posted notices in conspicuous places throughout the Company's facilities informing all persons of the Company's policy and right to question individuals and conduct inspections.

Persons entering the premises who refuse to cooperate in an inspection conducted pursuant to this Policy will be escorted from the premises. Employees on, entering, or leaving the premises who refuse to cooperate in an inspection may be subject to disciplinary action, up to and including termination of employment.

OCCUPATIONAL INJURIES POLICY

The Company is committed to providing a safe environment for its employees. The Company prides itself on providing a clean facility free of obstructions and unsafe practices. However, the Company realizes that injuries do occur. **Therefore, if an employee is injured on the job, it is the employee's responsibility to report the injury immediately to his/her supervisor. If an employee fails to report an occupational injury in a timely manner, the employee may be subject to disciplinary action. Further, failure to report an occupational injury in a timely manner may impede the employee's ability to obtain benefits.**

After an employee reports an occupational injury, the employee's supervisor will address the claim and the employee will be immediately required, except for good cause, to fill out an "Employee's Report of Occupational Injury". The employee will be offered medical treatment. All occupational injuries will be referred to the Company's Risk Management Department for investigation and coordination of benefits. All follow-up care and referrals will be coordinated with a designated adjuster in the Company's Risk Management Department.

If an employee works at a location in Texas, the claim will be processed according to the procedures outlined in the employee's Texas Injury Benefit Plan Summary Plan Description ("SPD").

Any work time missed by an employee in excess of 3 consecutive calendar days due to an occupational injury will be considered a Serious Health Condition and all time missed will be counted against the employee's available leave under the Company's Family Medical and Military Family Leaves Policy, if any.

If the employee's claim relating to a reported occupational injury is denied, the employee must either: (1) immediately contact his/her supervisor to seek reinstatement and provide a Full Duty release (as defined below) from his/her accredited medical professional, or (2) if eligible, submit a request for Family Medical/Military Leave as required under the Company's Family Medical and Military Family Leaves Policy.

If an employee fails to speak directly with his/her supervisor to either seek reinstatement or request a leave under the Company's Family Medical and Military Family Leaves Policy within 2 business days

following the denial of the employee's claim for benefits, such will constitute No Call-No Show absences under the Company's Attendance Policy, and the employee will be deemed to have abandoned his/her job and voluntarily resigned his/her employment.

An employee off work due to an occupational injury, who is covered under the Company's Medical and Dental Plan for Hobby Stores, Inc., may continue participation by paying his/her regularly-scheduled employee premium (premiums for all Texas employees will be made from any wage replacement benefit). As set forth in the Medical and Dental Plan for Hobby Lobby Stores, Inc. Summary Plan Description, coverage for an employee who is absent from work shall not exceed 6 months.

Transitional Duty

Except as required by the Americans with Disabilities Act ("ADA"), Transitional Duty work assignments *may* be provided to employees under medical supervision for ***occupational injuries only*** when the injury results in the employee's temporary inability to perform all of the essential functions of the employee's job. When an employee is released to return to work in a Transitional Duty capacity, the employee must contact his/her supervisor and seek reinstatement within 2 business days following such release. **If an employee fails to speak directly with his/her supervisor to seek reinstatement within 2 business days following the employee's release to return to work in a Transitional Duty capacity, such will constitute No Call-No Show absences under the Company's Attendance Policy, and the employee will be deemed to have abandoned his/her job and voluntarily resigned his/her employment.**

"Transitional Duty" means a temporary work assignment within the Company, with equal or lesser pay, which may be in a different position than the employee previously held, and where the employee performs most of the essential functions of the position while recognizing any documented restrictions.

"Restrictions" means written directives from an accredited medical professional indicating that the employee is unable to perform one or more of the essential functions of the position the employee held prior to his/her occupational injury.

Except as required by the ADA, the Company does not provide permanent Transitional Duty work assignments. All Transitional Duty work assignments are temporary in nature and may be available for a time period not to exceed 90 consecutive days, inclusive of weekends. The 90-day period begins on the first day the employee provides the Restrictions to his/her supervisor or the Risk Management Department stating such employee is unable to perform one or more of the essential functions of the job, but may return to work in a Transitional Duty capacity.

At the end of the employee's Transitional Duty work assignment, the employee must be at a Full Duty capacity in order to return to his/her previously-held position. An employee is "**Full Duty**" if his/her physician indicates in writing that the employee is able to perform all of the essential job functions of the position the employee held prior to his/her occupational injury, with no greater limitations than those with which the employee was hired, if any. At the end of the employee's Transitional Duty work assignment, if the employee has not been released at a Full Duty capacity then the employee may be placed on a leave of absence (Family Medical/Military Leave, if eligible).

Release and Reinstatement to Work

When an employee is released by his/her physician to return to work in any capacity following an occupational injury (*i.e.* Full Duty, Transitional Duty, or with Restrictions), the employee must speak directly with his/her supervisor and seek reinstatement within 2 business days following the release. **If an employee fails to speak directly with his/her supervisor and seek reinstatement within 2 any capacity following an occupational injury, such will constitute No Call-No Show absences under the Company's Attendance Policy, and the employee will be deemed to have abandoned his/her job and voluntarily resigned his/her employment.**

Unless the employee seeks reinstatement within 2 business days of the exhaustion of his/her Family Medical/Military Leave, there is no guarantee that a position will be available upon the employee's release to return to work.

PREGNANCY-RELATED RESTRICTIONS POLICY

If an employee is pregnant and her physician has imposed pregnancy related physical restrictions upon her, the Company may offer a temporary Transitional Duty work assignment, if such an assignment is available, during the term of pregnancy.

The employee must request from her supervisor a description of the Transitional Duty work assignment, and the assignment must be approved by her physician in writing before the assignment may commence. The employee may be placed on an unpaid leave of absence pending the approval of the Transitional Duty work assignment by her physician. If the functions of the employee's Transitional Duty work assignment subsequently change, the pregnant employee must get written approval from her physician before she can continue the Transitional Duty work assignment under the changed conditions. Pregnant employees working in a Transitional Duty capacity must continue to comply with all other Company policies, procedures, practices, and rules.

DRUG AND ALCOHOL TESTING POLICY

Purpose and Scope

It is the policy of the Company to provide a work environment for all of its employees that is free from the effects of Drug and Alcohol use. To achieve these goals, the following is prohibited:

1. Use, sale or possession of any Drug or Alcohol while on the job or at any time on Company property (including parking lots) or in Company vehicles; and

2. Impairment on the job because of the use any Drug or consumption of Alcohol.

Because of the potential for increased safety and financial risks which could result from Drug and Alcohol use at work, it is imperative that the Company adopt a stringent policy of Drug and Alcohol Testing for its employees.

This Drug and Alcohol Testing Policy is intended to be construed in a manner consistent with all applicable federal, state, and municipal laws. All Company employees are subject to the provisions of this Drug and Alcohol Testing Policy.

This Drug and Alcohol Testing Policy provides for Employment Applicant Testing, Reasonable Suspicion Testing, Accident Testing, Random Selection Basis Testing, and Rehabilitation Testing of all employees. Critical Position Employees will also be subject to Scheduled Periodic Testing for Drug and Alcohol use.

Definitions

As used in this Policy, the following terms have the meanings stated:

1. "**Accident Testing**" means that all employees may be required to undergo Drug and Alcohol Testing when the employee or another person has sustained an occupational injury or the Company's property has been damaged.

2. "**Alcohol**" means ethyl alcohol or ethanol.

3. "**Critical Position Employee**" means a Warehouse Employee, or other employee, whose work responsibilities or position place them in a safety sensitive department, i.e., forklift operator, machine operator, etc. An individual who is deemed a Critical Position Employee should be advised of such designation at the time of hire or assignment. Critical Position Employees may be required to undergo Scheduled Periodic testing.

4. "**Drug**" means all drugs or their metabolites that have been approved or deemed approved for testing by the respective state, including the following:

    i. marijuana;
    ii. opiates/synthetic narcotics:
        a. codeine;
        b. hydrocodone;
        c. hydromorphone;
        d. meperidine;
        e. methadone;
        f. oxycodone;
        g. propoxyphene;
        h. heroin;
        i. morphine;
    iii. cocaine;
    iv. phencyclidine;
    v. amphetamines:
        a. amphetamines;
        b. methamphetamines;
        c. methylenedioxyamphetamine;
        d. methylenedioxymethamphetamine;
        e. phentermine;
    vi. barbiturates:
        a. amobarbital;
        b. butalbital;
        c. phenobarbital;
        d. secobarbital;
    vii. benzodiazepines:
        a. diazepam;
        b. chlordiazepoxide;
        c. alprazolam;
        d. clorazepate; and
    viii. methaqualone.

5. "**Drug/Alcohol Test**" means a chemical test administered on a Sample for the purpose of determining the presence or absence of a Drug or its metabolites and/or Alcohol in a person's bodily tissue, fluids or products.

6. "**Employment Applicant Testing**" means that applicants for employment, upon a conditional offer of employment, may be required to undergo a Drug/Alcohol Test.

7. "**Random Selection Basis Testing**" means a mechanism for selecting employees for a Drug/Alcohol Test that:

    i. results in an equal probability that any employee within a certain department or location will be selected; and

    ii. does not give the Company discretion to waive the selection of any employee selected under the mechanism.

8. "**Reasonable Suspicion**" means a belief that an employee is using or has used Drugs and/or Alcohol in violation of this Policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

    i. observable phenomena, such as:
        a. the physical symptoms or manifestations of being under the influence of a Drug and/or Alcohol while at work or on duty;
        b. the direct observation of Drug and/or Alcohol use while at work or on duty;

    ii. a report, provided by reliable and credible sources and which has been independently corroborated, of:
        a. Drug and/or Alcohol use while at work or on duty;
        b. Drug and/or Alcohol use within 4 hours of the employee's shift;

    iii. evidence that an individual has tampered with a Drug/Alcohol Test during his/her employment with the Company; or

    iv. evidence that an employee is involved in the use, possession, sale, solicitation or transfer of Drugs and/or Alcohol while on duty or while on the Company's property or while operating a Company vehicle, machinery or equipment.

9. "**Rehabilitation Testing**" means that an employee may be required to undergo a Drug/Alcohol Test immediately on return to work and at any time within a 1-year period beginning with the date such employee returns to work following the completion of the Employee Assistance Program.

10. "**Sample**" means tissue, fluid or product of the human body chemically capable of revealing the presence of Drugs and/or Alcohol in the human body.

11. "**Scheduled Periodic Testing**" means that the Company may request or require an employee to undergo Drug/Alcohol Testing if the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely for all members of an employment classification or group and which is part of the Company's written policy.

Testing That May Be Required

The Company may require a Drug/Alcohol Test as follows:

1. The Company may require all applicants for employment, upon a conditional offer of employment, to undergo a Drug and Alcohol Testing.

2. The Company may require an employee to undergo a Drug/Alcohol Test if the Company has a Reasonable Suspicion that such employee has violated this Drug and Alcohol Testing Policy.

3. The Company may require any employee who has i) suffered an occupational accident that results in medical treatment, or ii) is involved in an accident or similar incident that gives rise to a Reasonable Suspicion of the use of Drugs and/or Alcohol, to undergo a Drug/Alcohol Test.

4. The Company may require an employee to undergo a Drug/Alcohol Test on a Random Selection Basis.

5. Any employee who enrolls in and complies with a Program of Rehabilitation, as defined below in accordance with the Company's Employee Assistance Program, shall not be subject to testing on a Random Selection Basis for a period of 30 days beginning with the day that the employee begins the Program of Rehabilitation. If such an employee is selected for Random Selection Basis Testing during this 30-day period, he/she must immediately request that his/her supervisor contact the Company's Human Resources Department to confirm the employee's compliance with the Program of Rehabilitation.

6. The Company may require an employee to undergo a Drug/Alcohol Test immediately upon returning to work and at any time within 1 year of the date such employee returns to work following completion of the Employee Assistance Program.

7. The Company may require any current employee who is being considered for assignment as a Critical Position Employee, upon a conditional offer of such assignment, to undergo a Drug/Alcohol Test.

8. The Company may require all Critical Position Employees to undergo Scheduled Periodic Testing at any time as determined by the Company.

9. All employees, even if complying with a Program of Rehabilitation, may be subject to Drug/Alcohol Test on a Reasonable Suspicion Basis.

Sample Collection and Testing Methods

The Company will pay all the costs associated with a Drug/Alcohol Test, unless the employee requests the testing facility to retest a urine sample. The Company will use the following sample collection procedures and Drug/Alcohol Test methods:

1. For Drug Testing: Urine samples will be collected for both initial testing and confirmation testing. In certain appropriate circumstances, blood samples may be taken.

2. For Alcohol Testing: Breath or saliva samples will customarily be collected for initial testing and breath or blood samples collected for confirmation testing. However, collection of blood samples for initial Alcohol Testing in certain limited circumstances may be appropriate. Additionally, for both initial and/or confirmation Alcohol Testing during the 1-year rehabilitation period under this Policy, the Company may require that urine samples be collected. Samples will be collected and tested with due regard to the privacy of the individual being tested and will be collected in sufficient quantity for splitting into 2 separate specimens. Any positive test result will be confirmed by a second test before such results can be used as a basis for any of the disciplinary actions described in this Policy. A breath alcohol concentration (BAC) of .04 or greater is deemed as a positive test result.

If a supervisor has a Reasonable Suspicion that an employee may be under the influence of Drugs or Alcohol while at work, and the employee is being required to submit to a Reasonable Suspicion Drug/Alcohol Test, the employee should not drive him/herself to the testing facility.

Confidentiality

All Drug/Alcohol Test results and related information, including interviews, reports, statements and memoranda, are confidential and proprietary information of the Company, and will be maintained by the Company as part of medical files separate from other personnel records and will not be used or released except as authorized by law. An employee or applicant shall have the right, on written request to the Company in accordance with the Company's Personnel Files Policy, to obtain copies of all information and records relating to that person's Drug/Alcohol Test maintained by the Company.

Prescribed Drugs

"Prescribed Drug" means any substance prescribed by a licensed medical practitioner for the individual consuming it. **An employee undergoing medical treatment with a Prescribed Drug that impairs his/her physical, mental or emotional faculties must immediately report this treatment to his/her supervisor.** Any such report shall be subject to the standards of confidentiality as set forth in this Policy. The taking of any Drug which is not prescribed to the employee by a licensed medical practitioner, or which is taken in a method inconsistent with the directives of such medical practitioner, is a violation of this Policy and may result in disciplinary action, up to and including termination of employment.

It is the employee's responsibility to educate him/herself of the possible side affects of any Prescribed Drug or medication. Employees are required to consult with their doctor or pharmacist to determine whether a Prescribed Drug is subject to the reporting requirements of this section. The reported use of Prescribed Drugs as a part of a medical treatment program is not a reason for disciplinary action, but may be cause for reassignment or placing the employee on a leave of absence during the time when the Prescribed Drug is consumed. However, if an employee fails to report the use of Prescribed Drugs to his/her supervisor as required in this section, he/she will be subject to disciplinary action as set forth below.

Under no circumstances is an employee allowed to provide a Prescribed Drug to another employee or customer. Employees who violate this Policy are subject to immediate discharge at the sole discretion of the Company.

Disciplinary Action

The Company has no control over whether a Drug/Alcohol Test is reported as positive or negative. Any questioning of or challenge to a test result should be addressed to the testing facility and not to the Company. The Company will take the following disciplinary actions for violation of this Policy:

1. Applicants who are subject to an Employment Applicant Drug/Alcohol Test who test positive or refuse to submit to a Drug/Alcohol Test **will be denied employment** with the Company as a result of such test result or refusal.

2. Employees who test positive for Drug and/or Alcohol use **will be terminated from employment.** Note: if the testing facility obtains a positive result, the testing facility will confirm the result by performing a second test from the original sample before the Company is notified. A breath alcohol concentration (BAC) of .04 or greater is deemed as a positive test result.

3. The Company will not consider rehire of an employee who has tested positive for Drugs and/or Alcohol.

4. Employees who refuse to submit to a Drug/Alcohol Test as required by this Policy **will be terminated from employment**. Any failure or refusal to follow instructions given in association with a Drug/Alcohol Test, or any tampering by an employee or applicant with any sample given or result obtained from a Drug/Alcohol Test is deemed to be a refusal by such employee or applicant to submit to such Drug/Alcohol Test.

5. Employees who fail to report the use of a Prescribed Drug in violation of this Policy:

    i. First Offense: The employee will receive a written warning, stating that any repeat violation will result in termination of employment.

    ii. Second Offense: The employee will be terminated from employment.

There shall be no right to appeal any disciplinary action taken by the Company, including termination or denial of employment, as a result of a confirmed positive Drug/Alcohol Test or refusal to submit to such a test. Any employee whose employment is terminated on the basis of a confirmed positive Drug/Alcohol Test or on the basis of the employee's refusal to undergo a Drug/Alcohol Test will be considered to have been terminated for misconduct for purposes of eligibility for unemployment compensation.

In accordance with this Policy, all positive Drug/Alcohol Tests must be confirmed by the testing facility in accordance with state and federal regulations. In the event an employee initially tests positive, and there is a delay of time between obtaining the initial results and the confirmation testing of the sample, the Company has the sole discretion to reassign or temporarily place the employee on a leave of absence without pay during that time period.

This Policy amends and supersedes all prior Policies of the Company for Drug/Alcohol Tests for employees.

Employee Assistance Program

During the existence of this Policy, the Company will establish and maintain either an in-house or a contracted Employee Assistance Program ("EAP") which will provide Drug/Alcohol dependency evaluation and referral services for substance abuse counseling, treatment, or rehabilitation. Employees can find out how to utilize the EAP by contacting their supervisor or the Human Resources Department at (877) 303-4547. Each employee who might benefit from these services is encouraged to use the EAP. An employee must proactively seek out assistance through the EAP prior to being selected for a Drug/Alcohol Test and prior to being disciplined for violating the Drug and Alcohol Testing Policy. Employees who approach their supervisor or the Human Resources Department seeking information about, or use of the EAP for the purpose of evaluating Drug/Alcohol dependency, after being directed to submit to a test, will still be required to submit to the Drug/Alcohol Test and will be subject to its resulting consequences.

All employees are subject to Drug/Alcohol Test provided for by this Policy (and resulting disciplinary action for a confirmed positive test or refusal to submit to a test) regardless of whether such employee has contacted his/her supervisor or the Human Resources Department regarding the EAP, or used the EAP. However, within the first 30 days of an employee's active participation in the EAP, the employee may be exempt from Drug/Alcohol Test on a Random Selection Basis; although the employee will be subject to Drug/Alcohol Test on a Reasonable Suspicion Basis and any disciplinary action to be issued due to the employee's positive test result.

Dependency Evaluation

Any employee who approaches his/her supervisor or the Human Resources Department seeking use of the EAP for the purpose of Drug/Alcohol dependency evaluation will be automatically taken off of work, pending the dependency evaluation. This time off will be unpaid, beyond any accrued Personal Paid Time Off, Sick Pay, or Vacation Pay, if applicable. An employee who fails to report to the scheduled evaluation or to maintain contact with the Human Resources Department until an evaluation is completed will be removed from the EAP. An employee removed from the EAP must return to work within 2 business days of removal from the EAP. If an employee fails to return to work within 2 business days of removal from the EAP, these absences will constitute 2 No Call-No Show absences and the employee will be considered to have voluntarily resigned from his/her employment.

Program of Rehabilitation

Through the Drug/Alcohol dependency evaluation, an employee should receive personalized treatment recommendations, called a "**Program of Rehabilitation**," which may include substance abuse counseling, treatment, and/or an in-patient or outpatient rehabilitation program. The employee will be required to successfully complete the Program of Rehabilitation as a condition of continued employment.

The employee must submit to the Human Resources Department, in writing, proof that the employee underwent a dependency evaluation and began the Program of Rehabilitation. Absent circumstances beyond the employee's control, if evidence of participation in the Program of Rehabilitation is not received by the Human Resources Department within five (5) working days from the date the dependency evaluation was completed, the employee will be subject to discipline up to and including termination of employment. The employee will continue to be off work until the employee has provided this written documentation. This time off will be unpaid, beyond any accrued Personal Paid Time Off, Sick Pay, or Vacation Pay. The

For a Program of Rehabilitation that does not include in-patient treatment, the employee will be expected to work while completing the program. The employee must make an effort to ensure that the Program of Rehabilitation does not interfere with work schedules and business needs. Should the Program of Rehabilitation require a temporary change of work duties, the employee may be assigned to another position pending completion of the program or placed on leave of absence to accommodate the Program. If the employee is eligible for Family Medical/Military Leave, then the employee will be placed on such leave when missing time from work to receive treatment.

If the Program of Rehabilitation includes in-patient treatment, the employee must provide, in writing to the Human Resources Department, the expected date of release from the in-patient treatment facility. The employee will continue to remain on an unpaid leave during in-patient treatment. If the employee is eligible for Family Medical/Military Leave, then the employee will be placed on such leave when missing time from work to receive treatment.

During the course of an employee's Program of Rehabilitation, the Company's Human Resources Department will monitor the employee's progress through the receipt of a weekly "**Status Report**" which is written documentation of the employee's compliance with the Program of Rehabilitation. The employee can submit the Status Report by fax each week to the Human Resources Department at (405) 745-1721. Failure to provide a Status Report and/or failure or refusal to comply with the Program of Rehabilitation will result in disciplinary action, up to and including termination of employment.

Any employee who enrolls in and complies with a Program of Rehabilitation, shall not be subject to testing on a Random Selection Basis for a period of 30 days beginning with the day that the employee begins the Program of Rehabilitation. If such an employee is selected for Random Selection Basis Testing during this 30-day period, he/she must immediately request that his/her supervisor contact the Company's Human Resources Department to confirm the employee's compliance with the Program of Rehabilitation. If the employee is not complying with the Program of Rehabilitation, then he/she shall be subject to the Random Selection Basis Testing and subject to disciplinary action that may be issued as a result of a positive test result. Any false claim of enrollment in and compliance with a Program of Rehabilitation will be considered a refusal to take a required Drug/Alcohol Test and will result in termination of employment.

Within 2 business days of the employee's completion of the Program of Rehabilitation, the employee must submit to the Company's Human Resources Department written documentation of the employee's successful completion of the Program of Rehabilitation, called a "**Release Report**." Failure to provide a Release Report will result in disciplinary action, up to and including termination of employment.

If the Program of Rehabilitation requires that the employee be on leave during the program, within 2 business days of submitting the Release Report to the Human Resources Department, the employee must speak directly with his/her supervisor to seek reinstatement following the successful completion of the Program of Rehabilitation. Failure to seek reinstatement within this time frame will constitute No Call-No Show under the Company's Attendance Policy and the employee will be deemed to have abandoned his/her job and voluntarily resigned his/her employment. Each employee who completes the Program of Rehabilitation will be subject to monthly Random Drug/Alcohol Tests for 1 year following the completion of the program.

7. FORMS

EMPLOYEE HANDBOOK
RECEIPT & ACKNOWLEDGEMENT FORM

By my signature below, I acknowledge that I have received a copy of the Company's[†] Employee Handbook. I understand this Employee Handbook contains important information on the Company's policies, procedures, and rules. It also contains my obligations as an employee.

I understand that this Employee Handbook replaces and supersedes any and all previous employee handbooks that I may have received, or agreements or promises made by any representative of the Company other than a Corporate Officer prior to the date of my signature below, and that I cannot rely upon any promises or representations made to me by anyone concerning the terms and conditions of my employment that are contrary to or inconsistent with this Employee Handbook, or any subsequent written modifications or revisions to this Employee Handbook posted on the Company's Employee Information Boards.

I understand that my employment with the Company is conditioned upon the contents of this Employee Handbook. I further understand that, with the exception of the Submission of Disputes to Binding Arbitration section of this Employee Handbook and the Mutual Arbitration Agreement, the Company may alter, change, amend, rescind, or add to any policies, procedures, or rules set forth in this Employee Handbook from time to time with or without prior notice. I further understand that the Company will notify me of any material changes to this Employee Handbook, and that, by continuing employment after being so notified of such changes, I acknowledge, accept, and agree to such changes as a condition of my employment and continued employment.

I understand that the employment relationship between me and the Company is at-will. I am employed on an at-will basis, as are all Company employees, and nothing to the contrary stated anywhere in this Employee Handbook or by any Company representative changes my or any employee's at-will status. I am free to resign at any time, for any reason, with or without notice. Similarly, the Company is free to terminate my employment at any time, for any reason, or for no reason at all. I also understand that nothing in this Employee Handbook is to be construed as creating, whether by implication or otherwise, any legal or contractual obligations or restrictions upon the Company's ability to terminate me as an employee at-will, for any reason at any time. Further, no person, other than a Corporate Officer of the Company, may enter into any written agreement amending this at-will employment policy or otherwise alter the at-will employment status of any employee.

By my signature below, I acknowledge that I have read and understand the provisions of this Employee Handbook and agree to abide by all Company policies, procedures, practices, and rules.

_____	_____
Employee's Name (printed)	SSN or Employee ID Number
_____	_____
Employee's Signature	Date

[†] "**Company**" shall mean the company for which the employee is or was employed, specifically Hobby Lobby Stores, Inc., Mardel, Inc., Crafts, Etc!, Ethnographic Media, Inc., Toy Gun Films, Inc., or any corresponding affiliate, successor, or assign.

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MUTUAL ARBITRATION AGREEMENT

This Mutual Arbitration Agreement ("Agreement"), by and between the undersigned employee ("Employee") and the Company[†], is made in consideration for the continued at-will employment of Employee, the benefits and compensation provided by Company to Employee, and Employee's and Company's mutual agreement to arbitrate as provided in this Agreement. Employee and Company hereby agree that any dispute, demand, claim, controversy, cause of action, or suit (collectively referred to as "Dispute") that Employee may have, at any time following the acceptance and execution of this Agreement, with or against Company, its affiliates, subsidiaries, officers, directors, agents, attorneys, representatives, and/or other employees, that in any way arises out of, involves, or relates to Employee's employment with Company or the separation of Employee's employment with Company (including without limitation, all Disputes involving wrongful termination, wages, compensation, work hours, invasion of privacy, false imprisonment, assault, battery, malicious prosecution, defamation, negligence, personal injury, pain and suffering, emotional distress, loss of consortium, breach of fiduciary duty, sexual harassment, harassment and/or discrimination based on any class protected by federal, state or municipal law, and all Disputes involving interference and/or retaliation relating to workers' compensation, family or medical leave, health and safety, harassment, discrimination, and/or the opposition of harassment or discrimination, and/or any other employment-related Dispute in tort or contract), shall be submitted to and settled by final and binding arbitration in the county and state in which Employee is or was employed. Such arbitration shall be conducted pursuant to the American Arbitration Association's National Rules for the Resolution of Employment Disputes or the Institute for Christian Conciliation's Rules of Procedure for Christian Conciliation, then in effect, before an arbitrator licensed to practice law in the state in which Employee is or was employed and who is experienced with employment law. Disputes are to be brought within the limitations period established by the applicable statute, if the Dispute involves statutory rights and the applicable statute provides for a limitations period. If there is no statutory limitation period, such Disputes must be brought within one (1) year of the day on which the aggrieved party knew, or through reasonable diligence should have known, of the facts giving rise to the Dispute. The parties agree that all Disputes contemplated in this Agreement shall be arbitrated with Employee and Company as the only parties to the arbitration, and that no Dispute contemplated in this Agreement shall be arbitrated, or litigated in a court of law, as part of a class action, collective action, or otherwise jointly with any third party. Prior to submitting a Dispute to arbitration, the aggrieved party shall first attempt to resolve the Dispute by notifying the other party in writing of the Dispute. If the other party does not respond to and resolve the Dispute within 10 days of receipt of the written notification, the aggrieved party then may proceed to arbitration. The parties agree that the decision of the arbitrator shall be final and binding. Judgment on any award rendered by an arbitrator may be entered and enforced in any court having jurisdiction thereof.

This Agreement between Employee and Company to arbitrate all employment-related Disputes includes, but is not limited to, all Disputes under or involving Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866 and 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Fair Credit Act, the Employee Retirement Income Security Act, and all other federal, state, and municipal statutes, regulations, codes, ordinances, common laws, or public policies that regulate, govern, cover, or relate to equal employment, wrongful termination, wages, compensation, work hours, invasion of privacy, false imprisonment, assault, battery, malicious prosecution, defamation, negligence, personal injury, pain and suffering, emotional distress, loss of consortium, breach of fiduciary duty, sexual harassment, harassment and/or discrimination based on any class protected by federal, state or municipal law, or interference and/or retaliation involving workers' compensation, family or medical leave, health and safety, harassment, discrimination, or the opposition of harassment or discrimination, and any other employment-related Dispute in tort or contract. This Agreement shall not apply to claims for benefits under unemployment compensation laws or workers' compensation laws.

By agreeing to arbitrate all Disputes, Employee and Company understand that they are not giving up any substantive rights under federal, state, or municipal law (including the right to file claims with federal, state, or municipal government agencies). Rather, Employee and Company are mutually agreeing to submit all Disputes contemplated in this Agreement to arbitration, rather than to a court. Company shall bear the administrative costs and fees assessed by the arbitration provider selected by Employee: either the Employment Arbitration Rules and

[†] "**Company**" shall mean the company for which the employee is or was employed, specifically Hobby Lobby Stores, Inc., Mardel, Inc., Crafts, Etc!, Ethnographic Media, Inc., Toy Gun Films, Inc., or any corresponding affiliate, successor, or assign.

Mediation Procedures or the Institute for Christian Conciliation. Company shall be solely responsible for paying the arbitrator's fee. Except for those Disputes involving statutory rights under which the applicable statute may provide for an award of costs and attorney's fees, each party to the arbitration shall be solely responsible for its own costs and attorney's fees, if any, relating to any Dispute and/or arbitration. Should any party institute any action in a court of law or equity against the other party with respect to any Dispute required to be arbitrated under this Agreement, the responding party shall be entitled to recover from the initiating party all costs, expenses, and attorney fees incurred to enforce this Agreement and compel arbitration, and all other damages resulting from or incurred as a result of such court action.

Every individual who works for Company must have signed and returned to his/her supervisor this Agreement to be eligible for employment and continued employment with Company. Further, Employee's employment or continued employment will evidence Employee's acceptance of this Agreement. Employee acknowledges and agrees that Company is engaged in transactions involving interstate commerce, that this Agreement evidences a transaction involving commerce, and that this Agreement is subject to the Federal Arbitration Act. If any specific provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain binding and enforceable. This Agreement constitutes the entire mutual agreement to arbitrate between Employee and Company and supersedes any and all prior or contemporaneous oral or written agreements or understandings regarding the arbitration of employment-related Disputes. This Agreement is not, and shall not be construed to create, a contract of employment, express or implied, and shall not alter Employee's at-will employment status.

Employee and Company acknowledge that they have read this Mutual Arbitration Agreement, are giving up any right they might have at any point to sue each other, are waiving any right to a jury trial, and are knowingly and voluntarily consenting to all terms and conditions set forth in this Agreement.

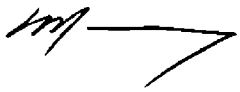
By Employee:

_____
Employee's Signature

_____
Employee's Name (Print)

_____
Employee Number

_____
Date

By Company: 

Peter M. Dobelbower
Vice President

DRUG AND ALCOHOL TESTING POLICY ACKNOWLEDGEMENT & CONSENT FORM

I have received a copy of the Company's[†] Drug and Alcohol Testing Policy, which is set forth in the Company's Employee Handbook. I understand that compliance with the Company's Drug and Alcohol Testing Policy is a condition of my employment.

I further understand that it is my responsibility to read the Company's Drug and Alcohol Testing Policy and understand its contents. I agree to comply with the Company's Drug and Alcohol Testing Policy. I understand that violating the Company's Drug and Alcohol Testing Policy will result in the termination of my employment

I further understand that the Company's Drug and Alcohol Testing Policy may be amended and changed at any time by the Company, and that such changes and amendments will apply to my job as conditions of employment.

If I am, or become, subject to a Drug/Alcohol Test under the Company's Drug and Alcohol Testing Policy, including Random Selection Basis Testing, Rehabilitation Testing, Scheduled Periodic Testing, Reasonable Suspicion Testing, or any other type of testing under the Policy, I hereby consent to have any necessary samples of urine, saliva and/or blood taken and tested by laboratories designated by the Company to determine any current use of Drugs and/or the presence of Drugs or Alcohol in my body. I authorize the Company and the testing laboratories to take samples and to perform any tests to make these determinations. I agree to cooperate in the taking and testing of such samples and I authorize the release of test results to Company officials.

I further consent to and authorize the laboratories conducting any Drug and Alcohol Testing to disclose all pertinent information, including the test results, to its employees involved in the testing process and to Company employees involved in the testing and employment process. I understand that the results of the tests will be used to determine my suitability for continued employment with the Company.

I understand the testing for the use of Drugs and/or Alcohol is voluntary and that I may refuse to submit to such testing. The consent to Drug and Alcohol Testing under the Company's Drug and Alcohol Testing Policy that I am providing herein is of my own free will. I further understand that if I revoke this consent and refuse to submit to a Drug/Alcohol Test under the Company's Drug and Alcohol Testing Policy, the Company will terminate my employment.

I hereby release the Company and the laboratories performing any Drug/Alcohol Test, and all of their officers, directors, employees, representatives, agents, and attorneys from any and all claims, liabilities, and damages arising out of the taking and testing of any samples of urine, saliva and/or blood and communicating the test results pursuant to this consent and release.

I acknowledge that the Company's Drug and Alcohol Testing Policy does not create any contract with the Company or alter my at-will employment status.

_____	_____
Employee's Name (printed)	SSN or Employee ID Number
_____	_____

[†] "**Company**" shall mean the company for which the employee is or was employed, specifically Hobby Lobby Stores, Inc., Mardel, Inc., Crafts, Etc!, Ethnographic Media, Inc., Toy Gun Films, Inc., or any corresponding affiliate, successor, or assign.

Employee's Signature Date

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REQUEST FOR FAMILY MEDICAL/MILITARY LEAVE

TO BE COMPLETED BY EMPLOYEE

IN ORDER TO BE CONSIDERED FOR FAMILY MEDICAL/MILITARY LEAVE, THIS COMPLETED FORM MUST BE SENT DIRECTLY TO:

Hobby Lobby Stores, Inc 7707 SW 44th Street Oklahoma City, OK 73179 Attn: Benefits Dept.	Crafts, Etc! 7717 SW 44th Street Oklahoma City, OK 73179 Attn: Human Resources Dept.	Mardel, Inc. 7727 SW 44th Street Oklahoma City, OK 73179 Attn: Accounting Dept.

1. Employee Name: _____
PRINT (Last Name, First Name, Middle Initial)

Employee Address: _____

Employee Telephone Number: _____

2. Employee's Position, Company, and Department/Store Location: _____

3. Reason for requested Family - Medical Leave:

A. [ ] Birth of your son or daughter and in order to care for your newborn son or daughter.
B. [ ] Placement of a son or daughter with you for adoption or foster care.
C. [ ] In order to care for your spouse, child or parent (Covered Relation) with a serious health condition.
D. [ ] Because of your own Serious Health Condition which makes you unable to perform the essential functions of your position.
E. [ ] Because of any "qualifying exigency" arising out of the fact that your spouse, son, daughter, or parent is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation to a foreign country.
F. [ ] In order to care for a service member/veteran who is recovering from a serious illness or injury sustained in the line of duty on active duty.

4. If "C", you will be caring for your: [ ] Spouse [ ] Child [ ] Parent

5. If "C", state name and address of relation: _____
_____

6. If "E", identify which family member is on/has been notified of an impending call to active duty status:
[ ] Spouse [ ] Child [ ] Parent

7. If "E", state name and address of relation: _____
_____

8. If "F", you are the: [ ] Spouse [ ] Child [ ] Parent [ ] Next of kin to an injured or ill service member

9. If "F", state name and address of relation: _____
_____

10. Date on which you wish to commence Family Medical/Military Leave: _____

11. Date of return to work: _____

12. Are you requesting Family Medical/Military Leave for an intermittent or reduced Family Medical/Military Leave schedule?
[ ] YES [ ] NO

13. If "YES" to 12, please provide the date on which you will be available for work. _____

CONTINUED ON BACK

14. If you have benefits with the Company, please initial to **continue** or **cancel** your benefits and check the appropriate box(es):

Continue Benefits

_____ (Initial) I elect to **continue** the following benefits while on approved Family Medical/Military Leave by [ ] pre-paying before I go out on Leave or [ ] paying while I am on Leave.

[ ] Medical/Dental Benefits
[ ] Optional Life Insurance
[ ] Long Term Disability Insurance
[ ] Health Flexible Spending Account (FSA)
[ ] Dependent Care Flexible Spending Account (FSA)

I understand that:

1. I must continue to make my scheduled premium payments;
2. If I fail to make my premium payments, my benefits will be canceled 30 days after a premium payment is missed;
3. The effective date of cancellation will be retroactive to the last day of the pay period the premium was paid through; and
4. All benefits I am enrolled in when my Family Medical/Military Leave commences will automatically be reinstated upon my return to work if such benefits were terminated for my failure to pay.

Continue Health FSA

_____ (Initial) I elect to **continue** the following benefits while on approved Family Medical/Military Leave by [ ] pre-paying before I go out on Leave, [ ] paying while I am on Leave, or [ ] catching up any missed premiums when I return from Leave.

If I currently participate in the **Health FSA** and in the event I am unable to make my premium payments after I am on Family Medical/Military Leave and I did not elect to catch up any missed premiums when I return from Leave, I elect to:

[ ] **Option 1**: Resume coverage at the level in effect before Family Medical/Military Leave and make up the unpaid premium payments, or

[ ] **Option 2:** Resume coverage at a level that is reduced and resume the premium payment at the level in effect before the Family Medical/Military Leave.

I understand that:

1. By choosing to resume my Health FSA coverage at a level that is reduced (Option 2), the coverage will be prorated for the period during the Family Medical/Military Leave for which no premiums were paid.
2. If I fail to designate how I would like my coverage to be reinstated, then it will automatically default back to my annual election when my Family Medical/Military Leave commenced.
3. If coverage is terminated for any reason, I may not retroactively elect Health FSA coverage for claims incurred during the period when the coverage was terminated.

OR

Cancel Benefits

_____ (Initial) I elect to **cancel** the following benefits while on approved Family Medical/Military Leave.

[ ] Medical/Dental Benefits
[ ] Optional Life Insurance
[ ] Long Term Disability Insurance
[ ] Health FSA
[ ] Dependent Care FSA

I understand that:

1. If I voluntarily elect to cancel my insurance coverage (effective the date my Family Medical/Military Leave commences as designated by the Benefits Department), I must notify the Benefits Department in writing within 30 days after returning to work of my subsequent election to reinstate coverage.;
2. If I fail to elect reinstatement in writing within 30 days after returning to work, I will not be able to subsequently re-enroll in benefits absent a qualifying event as defined in the respective Plan's Summary Plan Description.

All employees on Family Medical/Military Leave must immediately notify their respective Benefits Department upon returning to work. Failure to do so may result in the loss of benefits. For the purposes of Family Medical/Military Leave, notice given directly to the respective Benefits Department shall constitute employer notice of an employee's return to work.

Employee Name	Date	Employee Number

THIS IS NOT A MEDICAL RECORD

JOINT EXHIBIT 2Y

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Hobby Lobby Stores, Inc.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARIBEL ORTIZ, on behalf of herself and all others similarly situated,

Plaintiff,

v.

HOBBY LOBBY STORES, INC., an Oklahoma corporation; and DOES 1 through 50 inclusive,

Defendants.

Case No. 2:13-cv-01619-TLN-DAD

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT UNDER F.R.C.P. 12(b)(6) OR, IN THE ALTERNATIVE, TO COMPEL ARBITRATION; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: January 16, 2014
Time: 2:00 p.m.
Judge: Judge Troy L. Nunley
Courtroom: 2, 15th floor

TO PLAINTIFF AND TO HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTE THAT on January 16, 2014, or as soon thereafter as this matter may be heard in Courtroom 2 of the above-entitled Court, located at 501 I Street, Sacramento, California 95814, Defendant Hobby Lobby Stores, Inc. will, and hereby does, move, pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, to dismiss Plaintiff's Complaint for failure to state a claim or, in the alternative, to compel Plaintiff to arbitration and to stay her lawsuit.

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, the Declarations of Martin Mumm and Cheryl D. Orr, all pleadings and papers on file with the Court in this action, and on such other matters as may be

presented to the Court.

Dated: December 3, 2013

DRINKER BIDDLE & REATH LLP

By: _____
Cheryl D. Orr

Attorneys for Defendant Hobby Lobby Stores, Inc.

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TABLE OF AUTHORITIES

STATUTES, RULES & REGULATIONS

Defendant Hobby Lobby Stores, Inc. ("Hobby Lobby" or "Defendant") respectfully submits this memorandum of points and authorities in support of its motion to dismiss under Federal Rules of Civil Procedure ("FRCP"), Rule 12(b)(6), or in the alternative, to compel arbitration and stay.

I.

INTRODUCTION

On November 18, 2010, Plaintiff Maribel Ortiz ("Ortiz" or "Plaintiff") and Hobby Lobby executed a Mutual Arbitration Agreement (the "Arbitration Agreement") agreeing that "any dispute, demand, claim, controversy, cause of action, or suit" between them "shall be submitted to and settled by final and binding arbitration in the county and state in which [Plaintiff] is or was employed." See Ex. 1 to Declaration Of Martin Mumm In Support Of Defendant's Motion To Dismiss Complaint Under F.R.C.P. 12(b)(6) Or, In The Alternative, To Compel Arbitration ("Mumm Decl."). Pursuant to the Arbitration Agreement, the parties explicitly agreed that any arbitration would proceed on an individual basis. *See id.*

All seven claims contained in Ortiz's Complaint fall within the scope of the parties' bilateral Arbitration Agreement. That agreement, which Ortiz voluntarily executed during her employment with Hobby Lobby, is objectively reasonable and provides a fair and complete mechanism for resolving disputes.

By filing this lawsuit in the Eastern District of California (the "Eastern District"), Plaintiff breached her obligations pursuant to the Arbitration Agreement. Because the parties agreed that arbitration was the *sole* forum for the resolution of Plaintiff's claims, Hobby Lobby asks the Court to dismiss this action on the ground that Plaintiff has failed to state a claim upon which relief can be granted. Alternatively, Hobby Lobby requests that the Court order Plaintiff to submit her claims to individual arbitration, and stay this action pending the resolution of the arbitration.

II.

FACTUAL BACKGROUND

Defendant, a retailer of arts and crafts supplies, party supplies, and related items, hired Plaintiff on November 18, 2010, as a non-exempt, hourly employee in the floral department of its Visalia, California store. *See* Mumm Decl., ¶¶ 2-3. Plaintiff worked for Defendant until January 2013. Ex. 2 to Mumm Decl., Compl., ¶ 5.

At the inception of her employment, Plaintiff executed the Arbitration Agreement, which details the express agreement between the parties to privately arbitrate all disputes. *See* Ex. 1 to Mumm Decl. In addition to agreeing to submit her individual claims to arbitration, Plaintiff expressly waived any right to seek damages, relief or penalties through a class or collective action. Specifically, the Arbitration Agreement provides, in relevant part, that:

> The parties agree that all Disputes contemplated in this Agreement shall be arbitrated with Employee and Company as the only parties to the arbitration, and that no Dispute contemplated in this Agreement shall be arbitrated, or litigated in a court of law, as part of a class action, collective action, or otherwise jointly with any third party.

Ex. 1 to Mumm Decl., Arbitration Agreement, p. 55.

Notwithstanding the unambiguous provisions of the Arbitration Agreement, on or about August 2, 2013, Plaintiff filed the operative Complaint in this action in the Eastern District (the "Complaint").[1] In the Complaint, Ortiz alleges that Defendant "failed to pay her and all other similarly situated individuals for all vested vacation pay, failed to pay at least minimum wages for all hours worked, failed to provide them with accurate written wage statements, and failed to timely pay them all of their final wages following separation of employment." Ex. 2 to Mumm Decl., Compl., ¶ 1. In addition, Ortiz pleads a representative claim for civil penalties stemming from the alleged Labor Code violations pursuant to the California Labor Code Private Attorney's

[1] Plaintiff previously instituted a substantially similar version of this action in Alameda Superior Court, on June 13, 2013. *See* Ex. 1 to Declaration Of Cheryl D. Orr In Support Of Defendant's Motion To Dismiss Complaint Under F.R.C.P. 12(b)(6) Or, In The Alternative, To Compel Arbitration ("Orr Decl."). Defendant removed Plaintiff's prior action to the Northern District of California, on July 15, 2013. *See id.* at ¶ 3. After Defendant filed a motion to dismiss, compel arbitration, and/or transfer venue, Plaintiff voluntarily dismissed her action then pending in the Northern District. *Id.* at ¶ 4. This suit followed.

General Act ("PAGA"), Labor Code sections 2698 *et seq.* *Id.* at ¶¶ 95-102.[2]

The Arbitration Agreement specifically covers all the claims Plaintiff asserts on her own behalf in the Complaint, *to wit*, "all Disputes involving wages, compensation, work hours" and further provides specifically that the "Agreement between Employee and Company to arbitrate all employment-related Disputes includes, but is not limited to, all Disputes under or involving the Fair Labor Standards Act and all other federal, state, and municipal statutes, regulations, codes, ordinances, common laws or public policies that regulate, govern, cover, or relate to wages, compensation, work hours, and any other employment-related Dispute in tort or contract." Ex. 1 to Mumm Decl., Arbitration Agreement, p. 55.

III.

THE COURT SHOULD DISMISS THIS ACTION, OR COMPEL ARBITRATION

A. Federal Policy Favors Enforcement Of Arbitration Agreements Of State And Federal Claims

The Federal Arbitration Act ("FAA") governs the validity of arbitration agreements and articulates a strong federal policy in favor of arbitration. *See AT&T Mobility, LLC v. Concepcion*, 131 S. Ct. 1740, 1745 (2011); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) ("Section 2 [of the FAA] is a congressional declaration of a liberal federal policy favoring arbitration agreements"); *see also In re Thorpe Insulation Co.*, 671 F.3d 1011, 1020 (9th Cir. 2012). Courts must enforce a valid arbitration agreement; the FAA "mandates that district courts *shall* direct the parties to proceed to arbitration on issues to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original); 9 U.S.C. § 3 ("If any suit or proceeding be brought in any court of the United States upon any issues referable to arbitration under an agreement in writing for such arbitration, the court shall on application of one of the parties stay the trial of the action until such arbitration has been had"). Moreover, courts must resolve any doubts concerning arbitrability in favor of arbitration. *Moses*, 460 U.S. at 24-25.

[2] Plaintiff's earlier action did not include a claim pursuant to PAGA. *See* Ex. 1 to Orr Decl.

Federal courts routinely follow these principles to find that employment claims, including claims arising out of California statutes and common law, are subject to arbitration. *See, e.g.*, *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 23 (1991) (compelling arbitration of federal discrimination claims); *Morvant v. P.F. Chang's China Bistro, Inc.*, 870 F. Supp. 2d 831, 846 (N.D. Cal. 2012) (compelling arbitration of wage and hour claims on an individual basis and declining to except PAGA claims from arbitration agreement); *Parvataneni v. E*Trade Fin. Corp.*, 2013 LEXIS 136950, at *8 (N.D. Cal. Sept. 24, 2013) (compelling individual arbitration of plaintiff's wage and hour claims, following *Concepcion* and its progeny). States are powerless to exempt claims from the FAA. *Doctor's Assoc., Inc. v. Casarotto,* 517 U.S. 681, 687 (1996).

B. Ortiz's Arbitration Agreement Is Valid And Enforceable

Section 2 of the FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Within the context of this strong public policy, a Court must compel arbitration where it finds (1) the parties entered into a valid agreement to arbitrate; and (2) the specific dispute is within the scope of that agreement. *See Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000).

1. There Is A Valid Agreement To Arbitrate

In determining the validity of an agreement to arbitrate, federal courts "should apply ordinary state-law principles that govern the formation of contracts." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *Circuit City Stores, Inc. v. Adams*, 279 F.3d 889, 892 (9th Cir. 2002). In this case, we apply California contract law.

California law establishes four essential elements to form a valid contract: (1) parties capable of contracting; (2) mutual consent; (3) a lawful object; and (4) sufficient cause or consideration. Cal. Civ. Code § 1550. All of the above elements are satisfied here: First, it is beyond dispute that the parties had the legal capacity to contract, and they indicated their consent by signing and dating the clear, two-page Arbitration Agreement. Moreover, arbitration is a well-established lawful objective under federal and California law. *See, e.g.*, *Brookwood v. Bank of America,* 45 Cal. App. 4th 1667, 1671 (1996) (acknowledging California's "strong public policy

in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution"). Finally, the consideration for an arbitration agreement is legally adequate where, as here, each party agrees to be bound by the arbitration process. *See Armendariz v. Foundation Health Psychcare Serv., Inc.*, 24 Cal. 4th 83, 118 (2000). Thus, the Arbitration Agreement Plaintiff signed in connection with accepting her offer of employment from Defendant constitutes a valid agreement to arbitrate under California law.

2. The Arbitration Agreement Covers Plaintiff's Present Claims

Because the Arbitration Agreement constitutes a valid and enforceable agreement to arbitrate, this Court must next apply federal law to determine whether the dispute falls within its scope. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985). Federal law recognizes a strong presumption in favor of arbitration, and the scope of an arbitration clause must be construed liberally. *See Concepcion,* 131 S. Ct. at 1749; *see also AT&T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986) ("where the contract contains an arbitration clause, there is a presumption of arbitrability"). Any and all doubts should be resolved in favor of coverage. *See Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24-25 (The FAA "establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.").

Here, the scope of the Arbitration Agreement expressly covers Plaintiff's claims, inasmuch as the parties agreed to submit to arbitration, among other things, "all Disputes involving wages, compensation, work hours " and further provides specifically that the "Agreement between Employee and Company to arbitrate all employment-related Disputes includes, but is not limited to, all Disputes under or involving the Fair Labor Standards Act and all other federal, state, and municipal statutes, regulations, codes, ordinances, common laws or public policies that regulate, govern, cover, or relate to wages, compensation, work hours, and any other employment-related Dispute in tort or contract." Ex. 1 to Mumm Decl., Arbitration Agreement, p. 55. The only claims arising out of the employment relationship between Plaintiff and Defendant that may be pursued outside arbitration are "claims with federal,

state or municipal government agencies," including workers' compensation and unemployment compensation claims. *Id.* No reasonable argument can be made that Plaintiff's wage and hour claims do not fall within the scope of the Arbitration Agreement.

Thus, because a valid arbitration agreement encompasses the dispute, the court must enforce the Arbitration Agreement in accordance with its terms. *See Chiron Corp.*, 207 F.3d at 1130.[3]

C. There Is No Basis For Revocation

A valid arbitration agreement must be enforced, unless the party resisting arbitration can demonstrate that there is a legal or equitable basis for revocation under applicable contract law. *Green Tree Fin. Corp.-Ala. v. Randolph,* 531 U.S. 79, 91-92 (2000) ("party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration."); *see* 9 U.S.C. § 2. Because Plaintiff was employed in California, we again look to California law to determine whether there are grounds to revoke the Arbitration Agreement. *Circuit City Stores,* 279 F.3d at 892. Here, no such basis exists.

Under California law, a contract is enforceable unless it is both procedurally and substantively unconscionable. *Armendariz*, 24 Cal. 4th at 114. Both elements of unconscionability must be present to render a contract unenforceable. *Id.* In this case, although it is not Defendant's burden to prove, there are no grounds for revocation of the arbitration provision at-issue on the basis of unconscionability, or for any other reason.

[3] Even if there were a question of arbitrability here, federal law counsels in favor of arbitration in such circumstances. *See AT&T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986) ("where the contract contains an arbitration clause, there is a presumption of arbitrability"). "[I]n the absence of any express provision excluding a particular grievance from arbitration, only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail." *Id.* (citation omitted).

1. The Arbitration Provision Is Procedurally Conscionable

Procedural unconscionability concerns the manner in which the contract was negotiated and the circumstances of the parties at that time. *Kinney v. United HealthCare Serv., Inc.*, 70 Cal. App. 4th 1322, 1329 (1999). It focuses on whether there is "oppression" arising from an inequality of bargaining power or "surprise" arising from buried terms in a complex printed form *McManus v. CIBC World Mkt. Corp.*, 109 Cal. App. 4th 76, 87 (2003).

Surprise "involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms." *Stirlen v. Supercuts, Inc.*, 51 Cal. App. 4th 1519, 1532 (1997). Here, the Arbitration Agreement is a straightforward document, less than two pages in length. The Arbitration Agreement is written in plain language, is applicable to both Plaintiff and Defendant, and was separately signed by each party. Thus, Plaintiff cannot credibly claim that any element of "surprise" exists.

Likewise, there is no evidence of oppression; the fact that Plaintiff entered into the Agreement as a condition of her employment does not establish procedural unconscionability. As the Seventh Circuit (applying California law) observed in *Oblix, Inc. v. Winiecki*, 374 F.3d 488 (7th Cir. 2004), in connection with a challenge to enforcement of an arbitration agreement:

> [The company] paid her to do a number of things; one of the things it paid her to do was agree to non-judicial dispute resolution. It is hard to see how the arbitration clause is any more suspect, or any less enforceable, than the others--or, for that matter, than her salary. A person who accepts a "non-negotiable" offer of $50,000 salary would be laughed out of court if she filed suit for an extra $10,000, contending that the employer's refusal to negotiate made the deal "unconscionable" and entitled her to better terms. Well, arbitration was as much a part of this deal as [the plaintiff's] salary and commissions, the rules about handling trade secrets, and other terms. All stand or fall together.

Id. at 491. The same result should follow here: There is no evidence of procedural unconscionability.

2. The Arbitration Provision Is Substantively Conscionable

Because there is no basis for finding the Agreement procedurally unconscionable, Defendant does not need to address substantive unconscionability. In any event, however, Plaintiff cannot show that the Agreement is substantively unconscionable.

An agreement to arbitrate may be deemed substantively unconscionable only if its terms are so one-sided as to "shock the conscience." *See, e.g., Cal. Grocers Ass'n v. Bank of Am.*, 22 Cal. App. 4th 205, 214-15 (1994). The standard is high because, "[w]ith a concept as nebulous as 'unconscionability,' it is important that courts not be thrust in the paternalistic role of intervening to change contractual terms that the parties have agreed to merely because the court believes the terms are unreasonable." *Am. Software, Inc. v. Ali*, 46 Cal. App. 4th 1386, 1391 (1996).

Under *Armendariz*, an arbitration agreement need not be mutual in every respect, but need only reflect a "modicum of bilaterality." *Armendariz*, 24 Cal. 4th at 117. Here, the parties' Arbitration Agreement easily satisfies this low standard.[4]

The Arbitration Agreement here is completely bilateral. Both Plaintiff and Defendant are bound to submit their claims to arbitration, subject to the same rules and procedures, and the same advantages and disadvantages. The Arbitration Agreement calls for any arbitration to be conducted by the Employee's choice of the American Arbitration Association or the Institute for Christian Conciliation, under the rules of which each party has access to the same array of discovery procedures and remedies. The Arbitration Provision is simply not an agreement that is "so extreme" or "unfair" that it "shocks the conscience." Therefore, under California law, it is beyond debate that the Arbitration Agreement is substantively conscionable. *See Serpa v. Cal. Surety Investigations, Inc.*, 215 Cal. App. 4th 695 (2013); *Roman v. Super. Ct.*, 172 Cal. App. 4th 1462, 1473 (2009); *Fittante v. Palm Springs Motors, Inc.*, 105 Cal. App. 4th 708, 725 (2003).

D. Plaintiff Must Individually Arbitrate Her Dispute

The parties here agreed to submit any Dispute to binding arbitration, expressly waiving their rights to a jury trial or to pursue *any* claim on a class, collective, or joint basis. Specifically, the Arbitration Agreement provides that:

> The parties agree that all Disputes contemplated in this Agreement shall be arbitrated with Employee and Company as the only parties to the arbitration, and that no Dispute contemplated in this

[4] An employment arbitration agreement lacks a "modicum of bilaterality" wherein the employee's claims against the employer, but not the employer's claims against the employee, are subject to arbitration. *Little v. Auto Stiegler, Inc.* 29 Cal. 4th 1064, 1072 (2003).

> Agreement shall be arbitrated, or litigated in a court of law, as part of a class action, collective action, or otherwise jointly with any third party.
>
> Employee and Company acknowledge that they have read this Mutual Arbitration Agreement, are giving up any right they might have at any point to sue each other, are waiving any right to a jury trial, and are knowingly and voluntarily consenting to all terms and conditions set forth in this Agreement.

Ex. 1 to Mumm Decl., Arbitration Agreement, pp. 55-56. These provisions are fully enforceable under the FAA. *See Concepcion,* 131 S. Ct. at 1750-53 (holding the FAA preempts state law prohibiting class action waivers).

Plaintiff cannot avoid individual arbitration by virtue of her inclusion of a "representative" claim pursuant to PAGA in her Complaint. As noted above, in addition waiving their rights to proceed on a class or collective basis, both Ortiz and Hobby Lobby also waived the right to proceed in any other representative or non-bilateral manner. As such, Plaintiff must be compelled to arbitrate her PAGA claim(s) on an individual basis as well. *See, e.g., Morvant v. P.F. Chang's China Bistro, Inc.*, 870 F. Supp. 2d 831 (N.D. Cal. 2012) (compelling arbitration despite class and representative action waiver; "the Court must enforce the parties' Arbitration Agreement even if this might prevent Plaintiffs from acting as private attorneys general."); *Velasquez v. Sears, Roebuck and Co.*, 2013 U.S. Dist. LEXIS 121400, at * 21 (S.D. Cal. Aug. 26, 2013) ("[P]ursuant to the FAA, the PAGA and class action waivers in the Agreement are enforceable.") (citations omitted).[5]

Accordingly, in addition to dismissing or staying and compelling arbitration, this Court should specifically order Plaintiff to arbitrate her claims on an individual basis only.

[5] To the extent Plaintiff attempts to rely on any California authority to the contrary, such authority is preempted. *See Concepcion,* 131 S. Ct. at 1747 ("When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.").

E. The Court Should Dismiss This Action Pursuant To Rule 12(b)(6) Of The Federal Rules of Civil Procedure

As demonstrated above, the only avenue by which Plaintiff may pursue her claims is through individual arbitration. Because Plaintiff has failed to state a claim upon which relief can be granted, dismissal is warranted. *See Lewis v. UBS Fin. Serv. Inc.*, 818 F. Supp. 2d 1161, 1165 (N.D. Cal. 2011) ("Where the claims alleged in a pleading are subject to arbitration, the Court may stay the action pending arbitration or dismiss the action."); *Luna v. Kemira Specialty, Inc.*, 575 F. Supp. 2d 1166, 1176 (C.D. Cal. 2008) ("Where a complaint and the attached exhibits demonstrate that all of plaintiff's claims are subject to arbitration, a court may dismiss the complaint under Rule 12(b)(6)"); *Thinket Ink Info. Res., Inc. v. Sun Microsystems*, 368 F.3d 1053, 1060 (9th Cir. 2004) (ruling that the district court did not err in dismissing the plaintiffs' claims that were subject to arbitration pursuant to FRCP 12(b)(6)); *Torn Ranch, Inc. v. Sunrise Commodities, Inc.*, 2009 WL 2834787, at *6 (N.D. Cal. 2009) ("Because all of [Plaintiff's] material claims can be resolved in arbitration, this court will exercise its discretion and dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6)").

F. In The Alternative, The Court Should Stay All Proceedings Pending Arbitration

Should the Court decline to dismiss Plaintiff's Complaint and instead issue an order compelling arbitration, it should stay the case pending resolution of the arbitration. *See* 9 U.S.C. §§ 3, 4 (2006) (where a court compels arbitration, it must stay the case pending the outcome of arbitration); *see also Countrywide Home Loans, Inc. v. Mortgage Guaranty Ins. Corp.*, 2011 WL 4948538, at *2 (N.D. Cal. Oct. 18, 2011) ("The language of Section 3 is mandatory and it compels a court to stay litigation of issues that are reserved for arbitration."). Defendant also specifically requests that the Court stay all case deadlines if it compels Plaintiff to arbitrate the current dispute.

IV.

CONCLUSION

Here, Plaintiff contractually agreed to arbitrate any dispute against Defendant on an individual basis. As her Arbitration Agreement is valid, enforceable, and encompasses the dispute at bar, the FAA precludes a court from adjudicating Plaintiff's present claims. For all the reasons set forth herein, Defendant respectfully requests that this Court dismiss this action for failure to state a claim upon which relief can be granted, or, in the alternative, order Plaintiff to submit her claims to arbitration on an individual basis and stay all proceedings pending resolution of the arbitration.

Dated: December 3, 2013

DRINKER BIDDLE & REATH LLP

By: _____
Cheryl D. Orr

Attorneys for Defendant Hobby Lobby Stores, Inc.

SF01/918601.4

JOINT EXHIBIT 2Z

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JEREMY FARDIG, JEREMY WRIGHT, and CHRISTIAN BOLIN, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

HOBBY LOBBY STORES, INC., an Oklahoma Corporation; and DOES 1 through 100 inclusive,

Defendants.

Case No. SACV14-561-JVS(ANx)

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT UNDER F.R.C.P. 12(b)(6) OR, IN THE ALTERNATIVE, TO COMPEL ARBITRATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: June 9, 2014
Time: 1:30 p.m.
Judge: Judge James V Selna
Courtroom: 10C

TO PLAINTIFFS JEREMY FARDIG, JEREMY WRIGHT, AND CHRISTIAN BOLIN, AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTE THAT on June 9, 2014, or as soon thereafter as this matter may be heard in room 10C of the above-entitled Court, located at 411 West Fourth Street, Santa Ana, California 92701, Defendant Hobby Lobby Stores, Inc. will, and hereby does, move, pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, to dismiss Plaintiffs' Complaint for failure to state a claim or, in the alternative, to compel Plaintiffs to arbitration and to stay their lawsuit.

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, the Declaration of Martin Mumm, all pleadings and papers on file with the Court in this action, and on such other matters as may be presented to the Court. This motion is made following the attempt to confer with Plaintiffs' counsel regarding the filing of this motion.

Dated: April 17, 2014

DRINKER BIDDLE & REATH LLP

By: 
Cheryl D. Orr
Philippe A. Lebel
Saba S. Shatara

Attorneys for Defendant Hobby Lobby Stores, Inc.

Defendant Hobby Lobby Stores, Inc. ("Hobby Lobby" or "Defendant") respectfully submits this memorandum of points and authorities in support of its motion to dismiss under Federal Rules of Civil Procedure ("FRCP"), Rule 12(b)(6), or in the alternative, to compel arbitration and stay.

I. INTRODUCTION.

At the inception of their employment, Plaintiffs Jeremy Fardig, Jeremy Wright, and Christian Bolin (collectively "Plaintiffs") executed Mutual Arbitration Agreements (the "Agreements")[1] with Hobby Lobby agreeing that "any dispute, demand, claim, controversy, cause of action, or suit" between them "shall be submitted to and settled by final and binding arbitration. " *See* Exhibits A through C to the Declaration Of Martin Mumm ("Mumm Decl."). Pursuant to these Agreements, the parties explicitly agreed that any arbitration would proceed on an individual basis. *See id.*

All five claims contained in Plaintiffs' Complaint fall within the scope of the parties' bilateral Agreements. Those agreements, which Plaintiffs voluntarily executed during their employment with Hobby Lobby, are objectively reasonable and provide a fair and complete mechanism for resolving disputes.

By filing this lawsuit in Superior Court, Plaintiffs breached their Agreements. Because the parties agreed that arbitration was the *sole* forum for the resolution of Plaintiffs' claims, Hobby Lobby now asks the Court to dismiss this action on the ground that Plaintiffs have failed to state a claim upon which relief can be granted. Alternatively, Hobby Lobby requests that the Court order Plaintiffs to submit their claims to individual arbitration, and stay this action pending the resolution of the arbitration, *as they previously agreed to do.*

[1] The Agreements will be referred to herein in the singular as the "Agreement."

II. FACTUAL BACKGROUND.

Hobby Lobby, a national retailer of arts and crafts supplies, party supplies, and related items, hired Plaintiffs Jeremy Fardig ("Fardig"), Jeremy Wright ("Wright"), and Christian Bolin ("Bolin") on December 21, 2012, March 7, 2012, and March 4, 2013, respectively, to work at two of its retail stores in California. *See* Mumm Decl., ¶¶ 2-3.

At or near the inception of their employment with the company, each Plaintiff executed his own Agreement, which detailed the express agreement between each of them and Hobby Lobby to privately arbitrate all disputes. *See* Exhs. A-C to Mumm Decl.[2] In addition to agreeing to submit their individual claims to arbitration, Plaintiffs expressly waived any right to seek damages, relief or penalties through a class or collective action. To that end, the Agreements provide, in relevant part, that:

> [t]he parties agree that all Disputes shall be arbitrated with Employee and Company as the only parties to the arbitration, and that no Dispute shall be arbitrated, or litigated in a court of law, as part of a class action, collective action, or otherwise jointly with any third party.

Exhs. A-C to Mumm Decl., Agreements, p. 55.

All three Plaintiffs eventually left their jobs at Hobby Lobby: Fardig and Bolin resigned effective October 23, 2013. *See* Exhs. G & I to Mumm Decl. A few weeks later, on November 11, 2013, Wright too resigned. *See* Exh. H to Mumm Decl.

Despite the clear provisions of their Agreements, on or about February 18, 2014, Plaintiffs filed the operative Complaint in this action in Orange County Superior Court (the "Complaint"). In the Complaint, Plaintiffs allege that Hobby Lobby failed to provide them and putative class members meal and rest periods;

[2] All three Plaintiffs also signed substantially identical arbitration agreements at the time they applied to work at/for Hobby Lobby. *See* Exhibits D-F to Mumm Decl.

failed to pay minimum and overtime wages; failed to provide accurate itemized wage statements; and engaged in unfair business practices in violation of California Business and Professions Code sections 17200 *et seq*. In addition, Plaintiffs plead a representative claim for civil penalties stemming from the alleged Labor Code violations pursuant to the California Labor Code Private Attorney's General Act ("PAGA"), Labor Code sections 2698 *et seq*.

Plaintiffs' Agreements specifically cover all the claims Plaintiffs assert on their own behalf in the Complaint, *to wit*, "all Disputes involving wages, compensation, work hours " and further provide specifically that the "Agreement between Employee and Company to arbitrate all employment-related Disputes includes, but is not limited to, all Disputes under or involving the Fair Labor Standards Act and all other federal, state, and municipal statutes, regulations, codes, ordinances, common laws or public policies that regulate, govern, cover, or relate to wages, compensation, work hours, and any other employment-related Dispute in tort or contract." Exhs. A-C to Mumm Decl., Agreements, p. 55.

III. THE COURT SHOULD DISMISS THIS ACTION, OR COMPEL ARBITRATION.

A. Federal Policy Favors Enforcement Of Arbitration Agreements Of State And Federal Claims.

The Federal Arbitration Act ("FAA") governs the validity of arbitration agreements and articulates a strong federal policy in favor of arbitration. *See AT&T Mobility, LLC v. Concepcion*, 131 S. Ct. 1740, 1745 (2011); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) ("Section 2 [of the FAA] is a congressional declaration of a liberal federal policy favoring arbitration agreements"). Courts must enforce a valid arbitration agreement; the FAA "mandates that district courts *shall* direct the parties to proceed to arbitration on issues to which an arbitration agreement has been signed." *Dean Witter*

Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985) (emphasis in original); 9 U.S.C. § 3 ("If any suit or proceeding be brought in any court of the United States upon any issues referable to arbitration under an agreement in writing for such arbitration, the court shall on application of one of the parties stay the trial of the action until such arbitration has been had "). Moreover, courts must resolve any doubts concerning arbitrability in favor of arbitration. *Moses,* 460 U.S. at 24-25.

Federal courts routinely follow these principles to find that employment claims, including claims arising out of California statutes and common law, are subject to arbitration. *See, e.g., Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 23 (1991) (compelling arbitration of federal discrimination claims); *Morvant v. P.F. Chang's China Bistro, Inc.*, 870 F. Supp. 2d 831, 846 (N.D. Cal. 2012) (compelling arbitration of wage and hour claims on an individual basis and declining to except PAGA claims from arbitration agreement); *Parvataneni v. E*Trade Fin. Corp.*, 2013 LEXIS 136950, at *8 (N.D. Cal. Sept. 24, 2013) (compelling individual arbitration of plaintiff's wage and hour claims, following *Concepcion* and its progeny).

B. Plaintiffs' Agreements Are Valid And Enforceable.

Section 2 of the FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Within the context of this strong public policy, a Court must compel arbitration where it finds: (1) the parties entered into a valid agreement to arbitrate; and (2) the specific dispute is within the scope of that agreement. *See Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). Both prerequisites are satisfied in the case at bar.

1. Plaintiffs Executed Valid Agreements To Arbitrate.

In determining the validity of an arbitration agreement, federal courts "should apply ordinary state-law principles that govern the formation of contracts." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *Circuit City*

Stores, Inc. v. Adams, 279 F.3d 889, 892 (9th Cir. 2002). Thus, in this case, we apply California contract law.

California law establishes four essential elements to form a valid contract: (1) parties capable of contracting; (2) mutual consent; (3) a lawful object; and (4) sufficient cause or consideration. Cal. Civ. Code § 1550. All of the above elements are satisfied here: First, it is beyond dispute that the parties had the legal capacity to contract, and they indicated their consent by signing and dating the clear, two-page Agreements. Moreover, arbitration is a well-established lawful objective under federal and California law. *See, e.g., Brookwood v. Bank of America,* 45 Cal. App. 4th 1667, 1671 (1996) (acknowledging California's "strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution"). Finally, the consideration for an arbitration agreement is legally adequate where, as here, each party agrees to be bound by the arbitration process. *See Armendariz v. Foundation Health Psychcare Serv., Inc.*, 24 Cal. 4th 83, 118 (2000). Thus, the Agreements Plaintiffs signed in connection with accepting employment with Hobby Lobby constitute valid agreements to arbitrate under California law.

2. The Agreements Cover Plaintiffs' Present Claims.

Because the Agreements constitute valid and enforceable agreements to arbitrate, this Court must next apply federal law to determine whether Plaintiffs' present claims fall within the Agreements' scope. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985). Federal law recognizes a strong presumption in favor of arbitration, and the scope of an arbitration clause must be construed liberally. *See Concepcion,* 131 S. Ct. at 1749; *see also AT&T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986) ("where the contract contains an arbitration clause, there is a presumption of arbitrability"). Any and all doubts should be resolved in favor of coverage. *See Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24-25 (The FAA "establishes that, as a matter of federal

law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.").

Here, the scope of the Agreements expressly covers Plaintiffs' claims, inasmuch as the parties agreed to submit to arbitration, among other things, all disputes involving "wages, compensation, work hours " and further provide specifically that the "Agreement between Employee and Company to arbitrate all employment-related Disputes includes, but is not limited to, all Disputes under or involving the Fair Labor Standards Act and all other federal, state, and municipal statutes, regulations, codes, ordinances, common laws or public policies that regulate, govern, cover, or relate to wages, compensation, work hours, and any other employment-related Dispute in tort or contract." Exhs. A-C to Mumm Decl., Agreements, p. 55.[3]

Thus, because a valid arbitration agreement encompasses the dispute, the Court must enforce the Agreements in accordance with their terms. *See Chiron Corp.*, 207 F.3d at 1130.[4]

C. There Is No Basis For Revocation.

A valid arbitration agreement must be enforced, unless the party resisting arbitration can demonstrate that there is a legal or equitable basis for revocation

[3] The only claims arising out of the employment relationship between Plaintiffs and Defendant that may be pursued outside arbitration are "claims with federal, state or municipal government agencies," including workers' compensation and unemployment compensation claims. *Id.* No reasonable argument can be made that Plaintiffs' wage and hour claims do not fall within the scope of the Arbitration Agreement.

[4] Even if there were a question of arbitrability here, federal law counsels in favor of arbitration in such circumstances. *See AT&T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986) ("where the contract contains an arbitration clause, there is a presumption of arbitrability"). "[I]n the absence of any express provision excluding a particular grievance from arbitration, only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail." *Id.* (citation omitted).

under applicable contract law. *Green Tree Fin. Corp.-Ala. v. Randolph,* 531 U.S. 79, 91-92 (2000) ("party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration."); 9 U.S.C. § 2. Because Plaintiffs were employed in California, we again look to California law to determine whether there are grounds to revoke the Agreements. *Circuit City Stores,* 279 F.3d at 892. No such basis exists.

Under California law, a contract is enforceable unless it is both procedurally and substantively unconscionable. *Armendariz*, 24 Cal. 4th at 114.[5] Both elements of unconscionability must be present to render a contract unenforceable. *Id.* In this case, although it is not Defendant's burden to prove, there are no grounds for revocation of the arbitration provision at-issue on the basis of unconscionability, or for any other reason.

1. The Arbitration Provision Is Not Procedurally Unconscionable.

Procedural unconscionability concerns the manner in which the contract was negotiated and the circumstances of the parties at that time. *Kinney v. United HealthCare Serv., Inc.,* 70 Cal. App. 4th 1322, 1329 (1999). It focuses on whether there is "oppression" arising from an inequality of bargaining power or "surprise" arising from buried terms in a complex printed form *McManus v. CIBC World Mkt. Corp.*, 109 Cal. App. 4th 76, 87 (2003).

Surprise "involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms." *Stirlen v. Supercuts, Inc.*, 51 Cal. App. 4th 1519, 1532 (1997). Here, the Agreements are straightforward documents, less than two pages in length. The Agreements are written in plain English, are applicable to both

[5] Under California law, contracts also may be declared void on the grounds of fraud or duress. *McManus v. CIBC World Markets Corp.*, 109 Cal. App. 4th 76, 86 (2003). However, there is no allegation—let alone evidence—of either.

Plaintiffs and Defendant, and were separately signed by each party. Thus, Plaintiffs cannot credibly claim that any element of "surprise" exists.

Likewise, there is no evidence of oppression; the fact that Plaintiffs entered into the Agreements as a condition of their employment does not establish procedural unconscionability. As the Seventh Circuit (applying California law) explained in *Oblix, Inc. v. Winiecki*, 374 F.3d 488 (7th Cir. 2004), in connection with a challenge to enforcement of an arbitration agreement:

> [The company] paid her to do a number of things; one of the things it paid her to do was agree to non-judicial dispute resolution. It is hard to see how the arbitration clause is any more suspect, or any less enforceable, than the others—or, for that matter, than her salary. A person who accepts a "non-negotiable" offer of $50,000 salary would be laughed out of court if she filed suit for an extra $10,000, contending that the employer's refusal to negotiate made the deal "unconscionable" and entitled her to better terms. Well, arbitration was as much a part of this deal as [the plaintiff's] . salary and commissions, the rules about handling trade secrets, and other terms. All stand or fall together.

Id. at 491. That Plaintiffs now would prefer to litigate in court does not establish procedural unconscionability.

2. The Agreements' Are Not Substantively Unconscionable.

Because there is no basis for finding the Agreements procedurally unconscionable, Defendant does not need to address substantive unconscionability. In any event, however, Plaintiffs cannot show that the Agreements are substantively unconscionable, as they must to defeat Defendant's Motion.

An agreement to arbitrate may be deemed substantively unconscionable only if its terms are so one-sided as to "shock the conscience." *See, e.g., Cal. Grocers Ass'n v. Bank of Am.*, 22 Cal. App. 4th 205, 214-15 (1994). The standard is high because, "[w]ith a concept as nebulous as 'unconscionability,' it is important that courts not be thrust in the paternalistic role of intervening to change contractual terms that the parties have agreed to merely because the court believes the terms are unreasonable." *Am. Software, Inc. v. Ali*, 46 Cal. App. 4th 1386, 1391 (1996).

Under *Armendariz*, an arbitration agreement need not be mutual in every respect, but need only reflect a "modicum of bilaterality." *Armendariz*, 24 Cal. 4th at 117. Here, the parties' Agreements easily satisfy this low standard.

The Agreements here are bilateral. Both Plaintiffs and Defendant are bound to submit their claims to arbitration, subject to the same rules and procedures, and the same advantages and disadvantages. The Agreements call for any arbitration to be conducted by the employees' choice of the American Arbitration Association or the Institute for Christian Conciliation, under the rules of which each party has access to the same array of discovery procedures and remedies. The Agreements are not "so extreme" or "unfair" that they "shocks the conscience." Therefore, under California law, the Agreements are substantively conscionable and should be enforced. *See Serpa v. Cal. Surety Investigations, Inc.*, 215 Cal. App. 4th 695 (2013); *Roman v. Super. Ct.*, 172 Cal. App. 4th 1462, 1473 (2009); *Fittante v. Palm Springs Motors, Inc.*, 105 Cal. App. 4th 708, 725 (2003).

3. Even If Some Portion Of The Agreements Were Objectionable, The Law Supports Severance Of The Offensive Portion And Enforcement Of The Remainder Of Plaintiffs' Agreements.

A court should sever offending provisions from an arbitration agreement unless it is "'permeated' by unconscionability." *Armendariz*, 24 Cal. 4th at 122. As discussed above, there is nothing unconscionable in Plaintiffs' Agreements. Yet, even if there were, the Agreements are far from "permeated" with any alleged unconscionability.

Federal courts in California have routinely severed unconscionable provisions from arbitration agreements to further the federal policy in favor of arbitration. *See, e.g., Grabowski v. C.H. Robinson Co.*, 817 F. Supp. 2d 1159, 1179 (S.D. Cal. 2011) (severing non-mutual injunctive relief carve-out, confidentiality provision, and attorneys' fees provision; "The Court finds that, given the 'liberal federal policy favoring arbitration,' ., the three substantively unconscionable provisions may be severed from the agreement. ") (citing *Concepcion*); *Lara v.*

Onsite Health, Inc., 896 F. Supp. 2d 831, 843 (N.D. Cal. 2012) ("[O]nly the injunctive relief provision is substantively unconscionable. And, because this provision is 'collateral to the main purpose of the contract' it is easily severable. Moreover, this provision was not implicated in this case and there is no indication that it adversely affected" the plaintiff.).

Here, even if the Court took issue with some portion of the Agreements, it could easily sever any offensive portions and enforce the remainder of the Agreements in full.

D. Plaintiffs Must Individually Arbitrate Their Claims.

The parties here agreed to submit any employment-related disputes to binding arbitration, expressly waiving their rights to a jury trial or to pursue *any* claim on a class, collective, or joint basis. Specifically, the Agreements provide that:

> The parties agree that all Disputes shall be arbitrated with Employee and Company as the only parties to the arbitration, and that no Dispute shall be arbitrated, or litigated in a court of law, as part of a class action, collective action, or otherwise jointly with any third party.
>
> Employee and Company acknowledge that they have read this Mutual Arbitration Agreement, are giving up any right they might have at any point to sue each other, are waiving any right to a jury trial, and are knowingly and voluntarily consenting to all terms and conditions set forth in this Agreement.

Exhs. A-C to Mumm Decl., Agreements, pp. 55, 56. These provisions are fully enforceable under the FAA. *See Concepcion,* 131 S. Ct. at 1750-53 (holding the FAA preempts state law prohibiting class action waivers).

Plaintiffs cannot avoid individual arbitration by virtue of their inclusion of a "representative" claim pursuant to PAGA in their Complaint. As noted above, in addition to waiving their rights to proceed on a class or collective basis, Plaintiffs and Hobby Lobby also waived the right to proceed in any other representative or

non-bilateral manner. As such, Plaintiffs must be compelled to arbitrate their PAGA claims on an individual basis as well. *See, e.g., Morvant v. P.F. Chang's China Bistro, Inc.*, 870 F. Supp. 2d 831, 846 (N.D. Cal. 2012) (compelling arbitration despite class and representative action waiver; "the Court must enforce the parties' Arbitration Agreement even if this might prevent Plaintiffs from acting as private attorneys general."); *Velasquez v. Sears, Roebuck and Co.*, 2013 U.S. Dist. LEXIS 121400, at * 21 (S.D. Cal. Aug. 26, 2013) ("[P]ursuant to the FAA, the PAGA and class action waivers in the Agreement are enforceable.") (citations omitted).[6]

Accordingly, in addition to dismissing or staying and compelling arbitration, this Court should specifically order Plaintiffs to arbitrate their claims on an individual basis only.

E. The Court Should Dismiss This Action Pursuant To Rule 12(b)(6) Of The Federal Rules of Civil Procedure.

As demonstrated above, the only avenue by which Plaintiffs may pursue their claims is through individual arbitration. Because Plaintiffs have failed to state a claim upon which relief can be granted, dismissal is warranted. *See Lewis v. UBS Fin. Serv. Inc.*, 818 F. Supp. 2d 1161, 1165 (N.D. Cal. 2011) ("Where the claims alleged in a pleading are subject to arbitration, the Court may stay the action pending arbitration or dismiss the action."); *Thinket Ink Info. Res., Inc. v. Sun Microsystems*, 368 F.3d 1053, 1060 (9th Cir. 2004) (ruling that the district court did not err in dismissing the plaintiffs' claims that were subject to arbitration pursuant to FRCP 12(b)(6)); *Torn Ranch, Inc. v. Sunrise Commodities, Inc.*, 2009 WL 2834787, at *6 (N.D. Cal. 2009) ("Because all of [Plaintiff's] material claims can

[6] To the extent Plaintiffs attempt to rely on any California authority to the contrary, such authority is preempted. *See Concepcion,* 131 S. Ct. at 1747 ("When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.").

be resolved in arbitration, this court will exercise its discretion and dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6)").

F. In The Alternative, The Court Should Stay All Proceedings Pending Arbitration.

Should the Court decline to dismiss Plaintiffs' Complaint and instead issue an order compelling arbitration, it should stay the case pending resolution of the arbitration. *See* 9 U.S.C. §§ 3, 4 (2006) (where a court compels arbitration, it must stay the case pending the outcome of arbitration); *see also Countrywide Home Loans, Inc. v. Mortgage Guaranty Ins. Corp.*, 2011 WL 4948538, at *2 (N.D. Cal. Oct. 18, 2011) ("The language of Section 3 is mandatory and it compels a court to stay litigation of issues that are reserved for arbitration."). Defendant also specifically requests that the Court stay all case deadlines if it compels Plaintiffs to arbitrate the current dispute.

IV. CONCLUSION.

Here, Plaintiffs contractually agreed to arbitrate any dispute against Defendant on an individual basis. As their Agreements are valid, enforceable, and encompass the dispute at bar, the FAA precludes a court from adjudicating Plaintiffs' present claims. For all the reasons set forth herein, Defendant respectfully requests that this Court dismiss this action or, in the alternative, order Plaintiffs to submit their claims to arbitration on an individual basis and stay all proceedings pending resolution of the arbitration.

Dated: April 17, 2014

DRINKER BIDDLE & REATH LLP

By: _____
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Attorneys for Charging Party THE COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 20

HOBBY LOBBY STORES, INC., Respondent, and THE COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE, Charging Party.	No. 20-CA-139745 **CHARGING PARTY'S OBJECTIONS TO PROPOSED STIPULATED RECORD**

The Charging Party submits the following objections to the Proposed Stipulated Record:

1. There is a missing comma in Paragraph 4(a) of the "Stipulation of Facts" between the word "construction" and the words "warehouse workers." This omission erroneously suggests that there is only one classification.

2. Paragraph 4(a) and 4(b) have inconsistent terms. Although Paragraph (4)(a) refers to "team truck drivers," paragraph 4(b) refers to truck drivers. This inconsistency creates confusion.

3. The Stipulation fails to contain any information about the employee meetings that the Charging Party asserts are held at the store level. These meetings would be the appropriate

place where notices could be read and any change in employment policies could be explained to the employees.

4. The handbooks, Joint Exhibit ("JX") 2I and 2J, justify the Mutual Arbitration Agreement (hereinafter called "Forced Unilateral Arbitration Procedure" or "FUAP") on the ground that arbitration is mutually beneficial and assert a factual basis. See p. 13 of JX 2I and p. 14 of JX 2J. The Charging Party should be allowed to present contrary evidence that arbitration would not be speedy, efficient or expeditious due to its cost and other deficiencies. In fact, Respondent has been subject to arbitration claims and therefore the Charging Party should be allowed to present evidence that arbitrating those claims has been far more expensive and less efficient than proceeding in court or before an administrative agency which exists in a state to resolve those disputes. For example, California has an administrative labor commissioner process. See Labor Code § 98 (the "Berman Hearing Process"). Many other states have similar procedures where Hobby Lobby does business. The Charging Party should be allowed to present evidence that arbitration is far less efficient and far more costly to both Hobby Lobby and the individual employee as compared to proceeding administratively or in court.

5. The Charging Party recognizes that Respondent will argue that the Supreme Court has already ruled that arbitration generally is more cost efficient and has advantages to both parties. The Supreme Court has never expressly ruled on this issue in the employment context and certainly not with respect to an administrative procedure such as the Berman Hearing Process to resolve such claims.

In summary, the Charging Party should be allowed to make the factual record in the context of employment law claims that arbitration is not fast and efficient or offers any benefits to workers. In fact there is no benefit to workers, only benefits to employers who wish to prevent employees from pursuing employment disputes.

6. Although the Charging Party agrees that for the purposes of the National Labor Relations Act there is jurisdiction, it disputes whether the process of dispute resolution as defined in the FUAP affects interstate commerce. Indeed, whether the act of dispute of resolution, whether it is a discussion between two employees and one manager or an effort by two employees

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to resolve a minor pay dispute, scheduling or other disputes affects interstate commerce is an open question. The Charging party seeks to present evidence that the act of dispute resolution is not an activity which affects interstate commerce. If the activity of dispute resolution does not affect interstate commerce then it is unconstitutional to apply the Federal Arbitration Act.

7. The Employer's handbook has a "Non-Union Statement" which reflects the religious nature of the Employer's business. See p. 9 of JX 2I and p. 9-10 of 2J. The rest of the handbook emphasizes the religious nature and statement of purpose of the Employer. See JX 2I, p. 6 and 2J, p. 6.

8. To the extent that employees choose to act collectively, the Charging Party proposes to establish that this is an act protected as a religious right. This is confirmed by the employers' professed religious purposes and beliefs. Similarly, the activity is protected as a religious exercise of those who believe in the right of workers to act collectively both as a religious principle as well as the principle protected by the National Labor Relations Act. It is furthermore a principle that may be asserted against the FUAP and the application of the Federal Arbitration Act to preclude group claims.

9. These rights are protected by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (RFRA). The Act applies to all federal laws. See 42 U.S.C. § 2000bb-3. Thus, by its terms the Act has applicability to the National Labor Relations Act and the Federal Arbitration Act. Hobby Lobby itself has asserted that very Act in order to avoid the provisions of the Affordable Care Act. See *Burwell v. Hobby Lobby*, 573 U.S. _____ (2014). Thus, the Supreme Court has already ruled that the Religious Freedom Restoration Act applies to Hobby Lobby and certainly must apply to the collective action of its employees, particularly given how the Employer infuses its employment structure with its religious principles. Hobby Lobby declares that it does not discriminate based on exercise of religion. See Jt. Ex 2I, p. 6 and 2J p. 6. Yet its prohibition against bring group claims violates the right of employees to assert their religious beliefs that helping others is a religious right and privilege. Hobby Lobby's focus on some particular brand of religion ignores the fact that there are various forms of religious beliefs and those are all protected by the RFRA. *Gonzales v. O Centro Espirita Beneficente Uniao do*

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Vegetal, 546 U.S. 418 (2006), Charging Party is entitled to establish that there are religious beliefs protected by the RFRA which the Federal Arbitration Act and the National Labor Relations Act must accommodate and recognize. Cf *Burwell v. Hobby Lobby, supra.*

10. The right to engage in protected concerted activity including organizing is a fundamental religious belief for some just as the right to refrain is a religious right protected by the Act and title VII. That right is protected by the RFRA to the same extent that it protects the exercise of other religious views. Charging Party has a right to establish that organizing and concerted activity falls within the scope of activity protected by the RFRA. It falls within the RFRA's definition of "'exercise of religion' means exercise of religion under the first article of amendment to the Constitution of the United States."

11. The Charging Party recognizes that some employers may argue that the Religious Freedom of Restoration Act permits them to terminate employees or otherwise discriminate against the employees or even to refuse to recognize a union on a theory that not doing so violates some deeply held religious principle. Indeed, the National Labor Relations Act contains a provision protecting the rights of employees in a limited respect with respect to the religious use. See 29 U.S.C. § 169. The Religious Freedom Restoration Act creates an inevitable conflict between these two principles. This conflict needs to be resolved in the context of this case.

12. The Stipulation does not provide any factual evidence with respect to this conflict other than the references in the handbook. The Charging Party is entitled to present a much more complete case as to the right of employees to act collectively and the assurances by Hobby Lobby that its employment relationships with its employees are religious in nature.

13. To emphasize, none of these proposed facts go beyond the general Counsel's theory of the case. In fact most are consistent with the theory or raised as a response t any defense Hobby Lobby may raise. Even if the General Counsel does not assert that the RFRA does not apply this does not defeat the Charging Party's right to raise the issue in response to the Respondent's positions including an assertion the FAA trumps the NLRA. We assert the RFRA then trumps the FAA and its applicability to the NLRA.

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14. For these reasons, the stipulated record is inadequate. The Administrative Law Judge may accept the stipulated facts insofar as they are corrected as noted above and a hearing on the additional factual issues raised by the Charging Party should be allowed.

Dated: June 17, 2015

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/S/ DAVID A. ROSENFELD
By: DAVID A. ROSENFELD

Attorneys for Charging Party THE COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE

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PROOF OF SERVICE
(CCP §1013)

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On June 17, 2015, I served the following documents in the manner described below:

CHARGING PARTY'S OBJECTIONS TO PROPOSED STIPULATED RECORD

☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Mr. Frank Birchfield Ogletree Deakins 1745 Broadway, 22nd Floor, New York, NY, 10019 Email: frank.birchfield@ogletreedeakins.com	Ms. Yasmin Macariola National Labor Relations Board, Region 20 Field Attorney 901 Market Street, Suite 400 San Francisco, CA 94103-1738 Email: Yasmin.macariola@nlrb.gov
Eleanor Laws Administrative Law Judge Division of Judges 901 Market Street, Suite 300 San Francisco, California 94103-1779	

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 17, 2015, at Alameda, California.

/s/ Katrina Shaw
Katrina Shaw

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

HOBBY LOBBY STORES, INC.

and **Case 20-CA-139745**

THE COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE

ORDER GRANTING GENERAL COUNSEL AND RESPONDENT'S JOINT MOTION TO SUBMIT STIPULATED RECORD TO THE ADMINISTRATIVE LAW JUDGE AND SETTING BRIEFING SCHEDULE

I. ORDER GRANTING JOINT MOTION

On June 2, 2015, the General Counsel and the Respondent submitted a joint motion to submit a stipulated record to the administrative law judge (stipulation and motion). This motion and stipulation included a stipulation of issues presented, signed by Respondent and General Counsel on June 1, and June 2, 2015, respectively, and a submission of joint exhibits and stipulation of facts signed by the Charging Party, Respondent and General Counsel on May 28, May 27, and June 2, 2015, respectively.

On June 3, I issued an order setting a deadline of June 17, 2015, for the Charging Party to file and serve its response to the joint motion and stipulation, including any objections, and setting a deadline of June 24, 2015, for the General Counsel and the Respondent to submit responses. I have received and considered the Charging Party's objections to the proposed stipulated record, the General Counsel and Respondent's respective reply briefs in response to the Charging Party's objections to the proposed stipulated record. For the reasons set forth below, the General Counsel and Respondent's joint motion is here by GRANTED.

Section 10(b) of the National Labor Relations Act (the Act) provides for the issuance of a complaint and notice of hearing based upon a timely filed charge. However, a charging party has no absolute right to an evidentiary hearing under Section 10(b) if there are no material issues of fact to be resolved. *NLRB v. Brush–Moore Newspapers*, 413 F.2d 809, 811 (6th Cir. 1969). Thus, the General Counsel, who has the primary responsibility for prosecuting cases before the NLRB, may enter into stipulations without the charging party's consent subject to the right of a charging party to introduce contrary evidence or adduce additional facts. *B.F. Goodrich*, 113 NLRB 152 (1955), enfd. sub nom, *UAW v. NLRB*, 231 F. 2d 237 (7th Cir. 1956), cert. denied

352 U.S. 908. However, where a charging party objects to a stipulation entered into by the General Counsel, the Board is obliged to set forth "on the record" its reasons for accepting the stipulation notwithstanding the charging party's objections. *Concrete Materials of Georgia v. NLRB*, 440 F.2d 61, 68 (5th Cir. 1971).

The Complaint raises three issues: 1) whether the Respondent's mutual arbitration agreement (MAA) and related policies require employees, as a condition of employment, to waive their right to resolution of employment-related disputes by collective or class action in violation of Section 8(a)(1) of the Act; 2) whether employees would reasonably read the MAA to prohibit them from filing unfair labor practice charges with the Board in violation of Section 8(a)(1) of the Act; and 3) whether Respondent's enforcement of the MAA through its motions to compel arbitration violates Section 8(a)(1) of the Act.

The Charging Party's first objection asserts that the stipulation erroneously fails to put a comma between "construction" and "warehouse workers." The second objection contends there is inconsistency because different parts of paragraph 4 refer to "team truck drivers" and "truck drivers." The Charging Party fails to assert why these minor discrepancies are material and necessitate a hearing. The stipulated record sets forth these facts in a manner sufficient for me to decide the issues in the case.

The third objection asserts that the stipulation of facts does not contain any information about employee meetings to determine whether remedial notices could be read in these employee meetings. The General Counsel has not requested a notice reading as a remedy in the complaint. The Charging Party may argue for remedies not requested by the General Counsel and I will consider them at the compliance stage if I find merit to the General Counsel's complaint. Such evidence is not, however, relevant to the merits of this case.

The Charging Party's fourth and fifth objections assert that the Charging Party should be permitted to submit evidence that arbitration will not be speedy, efficient, or expeditious. Any decision on the merits of this case, however, will rely on established Board precedent, *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014), which the administrative law judge is not empowered to disturb. Any arguments regarding the legal integrity of Board precedent, including the foundations upon which it rests, are properly addressed to the Board. The stipulated record sets forth the relevant facts in a manner sufficient for adjudication under existing Board precedent.

The Charging Party's sixth objection concerns whether the process of dispute resolution affects interstate commerce. The Charging Party and the Respondent admit that the National Labor Relations Board has jurisdiction with respect to commerce. See Stipulation of Fact, p. 5, paragraph 3; Charging Party's Objections to Proposed Stipulated Record, p. 2, Objection #6; and Respondent's Answer to Amended Complaint, p. 2, paragraph 3.

The remainder of the objections, 7-13, relate to collective action and religion, and are outside the scope of the General Counsel's complaint.

For the foregoing reasons, I GRANT the joint motion of General Counsel and Respondent to hear this case on stipulation, and approve the Stipulation they submitted.[1]

II. ORDER SETTING BRIEFING SCHEDULE

Briefs in this matter will be due on August 3, 2015. See Section 102.111 of the Board's Rules and Regulations, governing the timeliness of briefs.

SO ORDERED this 29th day of June, 2015.

Eleanor Laws
Administrative Law Judge

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[1] For this reason, I do not find relevant the documents the Charging Party requested in it subpoena duces tecum to the Respondent. I will address this fully in my decision. Nothing precludes the Charging Party from making an offer of proof and providing supporting argument in his brief.

CERTIFICATE OF SERVICE

I certify that on this 20th day of December, 2016, I caused the JOINT APPENDIX VOLUME 1 OF HOBBY LOBBY STORES, INC. AND COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users properly addressed:

Ms. Valerie L. Collins, Attorney

Ms. Linda Dreeben, Attorney

Joseph F. Frankl, Attorney

Ms. Elizabeth A. Heaney, Attorney

Yasmin Macariola, Attorney

David A. Rosenfeld, Attorney

s/ Ron Chapman, Jr.
Ron Chapman, Jr.

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